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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Ralph King Anderson, III, Chief Administrative Law Judge

Appellate Case No. 2019-001706

Trial Court Case No. 17-ALJ-17-0238-CC

Amazon Services, LLC,..... Appellant,

v.

South Carolina Department of Revenue, ... Respondent.

APPENDIX - VOLUME III of VII

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SC Court of Appeals

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**RECORD ON APPEAL
VOLUME III of VI**

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Amazon Services Business Solutions Agreement

General Terms

Welcome to **Amazon Services Business Solutions**, a suite of optional services for sellers including: [Selling on Amazon](#), [Amazon Webstore](#), [Fulfillment by Amazon](#), [Amazon Clicks](#), and [Transaction Processing Services](#).

THIS AMAZON SERVICES BUSINESS SOLUTIONS AGREEMENT (THE "**AGREEMENT**") CONTAINS THE TERMS AND CONDITIONS THAT GOVERN YOUR ACCESS TO AND USE OF THE SERVICES AND IS AN AGREEMENT BETWEEN YOU OR THE BUSINESS YOU REPRESENT AND AMAZON. BY REGISTERING FOR OR USING THE SERVICES, YOU (ON BEHALF OF YOURSELF OR THE BUSINESS YOU REPRESENT) AGREE TO BE BOUND BY THE TERMS OF THIS AGREEMENT, INCLUDING THE SERVICE TERMS AND PROGRAM POLICIES THAT APPLY FOR EACH COUNTRY FOR WHICH YOU REGISTER OR ELECT TO USE A SERVICE (IN EACH CASE, THE "**ELECTED COUNTRY**").

As used in this Agreement, "**we**," "**us**," and "**Amazon**" means the applicable Amazon Contracting Party and any of its applicable Affiliates, and "**you**" means the applicant (if registering for or using a Service as an individual), or the business employing the applicant (if registering for or using a Service as a business) and any of its Affiliates. Capitalized terms have the meanings given to them in this Agreement. If there is a conflict among terms in this Agreement, the Program Policies will prevail over any applicable Service Terms and the General Terms, and the applicable Service Terms will prevail over the General Terms.

1. Enrollment.

To begin the enrollment process, you must complete the registration process for one or more of the Services. Use of the Services is limited to parties that can lawfully enter into and form contracts under applicable law (for example, the Elected Country may not allow minors to use the Services). As part of the application, you must provide us with your (or your business') legal name, address, phone number and e-mail address. We may at any time cease providing any or all of the Services at our sole discretion and without notice.

2. Service Fee Payments; Receipt of Sales Proceeds.

Fee details are described in the applicable Service Terms and Program Policies. You are responsible for all of your expenses in connection with this Agreement. To use a Service, you must provide us with valid credit card information from a credit card or credit cards acceptable by Amazon ("**Your Credit Card**") as well as valid bank account information for a bank account or bank accounts acceptable by Amazon (conditions for acceptance may be modified or discontinued by us at any time without notice) ("**Your Bank Account**"). You will use only a name you are authorized to use in connection with a

AMAZON CONFIDENTIAL

Hearing
Exhibit
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Service and will update all of the information you provide to us in connection with the Services as necessary to ensure that it at all times remains accurate, complete and valid. You authorize us (and will provide us documentation evidencing your authorization upon our request) to verify your information (including any updated information), to obtain credit reports about you from time to time, to obtain credit authorizations from the issuer of Your Credit Card, and to charge Your Credit Card or debit Your Bank Account for any sums payable by you to us (in reimbursement or otherwise). All payments to you will be remitted to Your Bank Account through a banking network or by other means specified by us.

For any amounts you owe us, we may (a) charge Your Credit Card or any other payment instrument you provide to us; (b) offset any amounts that are payable by you to us (in reimbursement or otherwise) against any payments we may make to you; (c) invoice you for amounts due to us, in which case you will pay the invoiced amounts upon receipt; (d) reverse any credits to Your Bank Account; or (e) collect payment or reimbursement from you by any other lawful means. Except as provided otherwise, all amounts contemplated in this Agreement will be expressed and displayed in the Local Currency, and all payments contemplated by this Agreement will be made in the Local Currency. If we discover erroneous or duplicate transactions, then we reserve the right to seek reimbursement from you by deducting from future payments owed to you, charging Your Credit Card, or seeking such reimbursement from you by any other lawful means.

IF WE DETERMINE THAT YOUR ACTIONS OR PERFORMANCE MAY RESULT IN RETURNS, CHARGEBACKS, CLAIMS, DISPUTES, OR OTHER RISKS, THEN WE MAY IN OUR SOLE DISCRETION WITHHOLD ANY PAYMENTS TO YOU UNTIL THE COMPLETION OF ANY RELATED INVESTIGATION. IF WE DETERMINE THAT YOUR ACCOUNT HAS BEEN USED TO ENGAGE IN DECEPTIVE, FRAUDULENT, OR ILLEGAL ACTIVITY, THEN WE MAY IN OUR SOLE DISCRETION PERMANENTLY WITHHOLD ANY PAYMENTS.

As a security measure, we may, but are not required to, impose transaction limits on some or all customers and sellers relating to the value of any transaction or disbursement, the cumulative value of all transactions or disbursements during a period of time, or the number of transactions per day or other period of time. We will not be liable to you: (i) if we do not proceed with a transaction or disbursement that would exceed any limit established by us for a security reason, or (ii) if we permit a customer to withdraw from a transaction because an Amazon Site or Service is unavailable following the commencement of a transaction.

3. Term and Termination.

The term of this Agreement will start on the date of your completed registration for or use of a Service, whichever occurs first, and continue until terminated by us or you as provided in this Agreement (the "**Term**"). We may terminate or suspend this Agreement or any Service for any reason at any time by notice to you. You may terminate this Agreement or any Service or the Promotion Site for any reason at any time by the means then specified by Amazon. Termination or

suspension of a Service will not terminate or suspend any other Service unless explicitly provided. Upon termination, all rights and obligations of the parties under this Agreement will terminate, except that Sections 2, 3, 4, 5, 6, 7, 8, 9, 11, 14, 15, 16 and 18 will survive termination. Any terms that expressly survive according to the applicable Service Terms will also survive termination.

4. License.

You grant us a royalty-free, non-exclusive, worldwide, perpetual, irrevocable right and license to use, reproduce, perform, display, distribute, adapt, modify, re-format, create derivative works of, and otherwise commercially or non-commercially exploit in any manner, any and all of Your Materials, and to sublicense the foregoing rights to our Affiliates and operators of Amazon Associated Properties; provided, however, that we will not alter any of Your Trademarks from the form provided by you (except to re-size trademarks to the extent necessary for presentation, so long as the relative proportions of such trademarks remain the same) and will comply with your removal requests as to specific uses of Your Trademarks (provided you are unable to do so using standard functionality made available to you via the applicable Amazon Site or Service); provided further, however, that nothing in this Agreement will prevent or impair our right to use Your Materials without your consent to the extent that such use is allowable without a license from you or your Affiliates under applicable law (e.g., fair use under United States copyright law, referential use under trademark law, or valid license from a third party).

5. Representations.

You represent and warrant to us that: (a) if you are a business, you are duly organized, validly existing and in good standing under the Laws of the country in which your business is registered and that you are registering for the Service(s) within such country; (b) you have all requisite right, power and authority to enter into this Agreement, perform your obligations, and grant the rights, licenses and authorizations in this Agreement; (c) any information provided or made available by you or your Affiliates to Amazon or its Affiliates is at all times accurate and complete; and (d) you and all of your subcontractors, agents and suppliers will comply with all applicable Laws in your performance of your obligations and exercise of your rights under this Agreement.

6. Indemnification.

You release us and agree to indemnify, defend and hold harmless us, our Affiliates, and our and their respective officers, directors, employees, representatives and agents against any claim, loss, damage, settlement, cost, expense or other liability (including, without limitation, attorneys' fees) (each, a "**Claim**") arising from or related to: (a) your actual or alleged breach of any obligations in this Agreement; (b) any of Your Sales Channels other than Amazon Sites and Amazon Associated Properties, Your Products (including their offer, sale, performance and fulfillment), Your Materials, any actual or alleged infringement of any Intellectual Property Rights by any of the foregoing, and any

personal injury, death or property damage related thereto; (c) Your Personnel (including any act or omission of Your Personnel or any Claim brought or directed by Your Personnel); or (d) Your Taxes. You will use counsel reasonably satisfactory to us to defend each indemnified Claim. If at any time we reasonably determine that any indemnified Claim might adversely affect us, we may take control of the defense at our expense. You may not consent to the entry of any judgment or enter into any settlement of a Claim without our prior written consent, which may not be unreasonably withheld.

7. Disclaimer & General Release.

a. THE AMAZON SITES AND THE SERVICES, INCLUDING ALL CONTENT, SOFTWARE, FUNCTIONS, MATERIALS AND INFORMATION MADE AVAILABLE ON OR PROVIDED IN CONNECTION WITH THE SERVICES, ARE PROVIDED "AS-IS," AS A USER OF THE SERVICES, YOU USE THE AMAZON SITES, THE SERVICES AND SELLER CENTRAL AT YOUR OWN RISK. TO THE FULLEST EXTENT PERMISSIBLE BY LAW, WE AND OUR AFFILIATES DISCLAIM: (i) ANY REPRESENTATIONS OR WARRANTIES REGARDING THIS AGREEMENT, THE SERVICES OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT; (ii) IMPLIED WARRANTIES ARISING OUT OF COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE; AND (iii) ANY OBLIGATION, LIABILITY, RIGHT, CLAIM OR REMEDY IN TORT, WHETHER OR NOT ARISING FROM OUR NEGLIGENCE. WE DO NOT WARRANT THAT THE FUNCTIONS CONTAINED IN THE AMAZON SITES AND THE SERVICES WILL MEET YOUR REQUIREMENTS OR BE AVAILABLE, TIMELY, SECURE, UNINTERRUPTED OR ERROR FREE, AND WE WILL NOT BE LIABLE FOR ANY SERVICE INTERRUPTIONS, INCLUDING BUT NOT LIMITED TO SYSTEM FAILURES OR OTHER INTERRUPTIONS THAT MAY AFFECT THE RECEIPT, PROCESSING, ACCEPTANCE, COMPLETION OR SETTLEMENT OF ANY TRANSACTIONS.

b. BECAUSE AMAZON IS NOT INVOLVED IN TRANSACTIONS BETWEEN CUSTOMERS AND SELLERS OR OTHER PARTICIPANT DEALINGS, IF A DISPUTE ARISES BETWEEN ONE OR MORE PARTICIPANTS, EACH PARTICIPANT RELEASES AMAZON (AND ITS AGENTS AND EMPLOYEES) FROM CLAIMS, DEMANDS, AND DAMAGES (ACTUAL AND CONSEQUENTIAL) OF EVERY KIND AND NATURE, KNOWN AND UNKNOWN, SUSPECTED AND UNSUSPECTED, DISCLOSED AND UNDISCLOSED, ARISING OUT OF OR IN ANY WAY CONNECTED WITH SUCH DISPUTES.

8. Limitation of Liability.

WE WILL NOT BE LIABLE (WHETHER IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE, PRODUCT LIABILITY OR OTHER THEORY) OR OTHERWISE) TO YOU OR ANY OTHER PERSON FOR COST OF COVER, RECOVERY OR RECOUPMENT OF ANY INVESTMENT MADE BY YOU OR YOUR AFFILIATES IN CONNECTION WITH THIS AGREEMENT, OR FOR ANY LOSS OF PROFIT, REVENUE, BUSINESS, OR DATA OR PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT, EVEN IF AMAZON HAS BEEN ADVISED OF THE POSSIBILITY OF THOSE COSTS OR DAMAGES. FURTHER, OUR AGGREGATE LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS

AGREEMENT OR THE TRANSACTIONS CONTEMPLATED WILL NOT EXCEED AT ANY TIME THE TOTAL AMOUNTS DURING THE PRIOR SIX MONTH PERIOD PAID BY YOU TO AMAZON IN CONNECTION WITH THE PARTICULAR SERVICE GIVING RISE TO THE CLAIM.

9. Insurance.

If the gross proceeds from Your Transactions exceed the applicable Insurance Threshold during each month over any period of three (3) consecutive months, or otherwise if requested by us, then within thirty (30) days thereafter, you will maintain at your expense throughout the remainder of the Term for each applicable Elected Country commercial general, umbrella or excess liability insurance with the Insurance Limits per occurrence and in aggregate covering liabilities caused by or occurring in conjunction with the operation of your business, including products, products/completed operations and bodily injury, with policy(ies) naming Amazon and its assignees as additional insureds. At our request, you will provide to us certificates of insurance for the coverage to the following address: c/o Amazon, P.O. Box 81226, Seattle, WA 98108-1226, Attention: Risk Management.

10. Tax Matters.

As between the parties, you will be responsible for the collection, reporting and payment of any and all of Your Taxes, except to the extent Amazon expressly agrees to receive taxes or other transaction-based charges in connection with tax calculation services made available by Amazon and used by you. You agree to and will comply with the Tax Policies. All fees payable by you to Amazon under this Agreement or the applicable Service Terms are exclusive of any applicable taxes, and you will be responsible for paying Amazon any of Your Taxes imposed on such fees.

11. Confidentiality.

During the course of your use of the Services, you may receive information relating to us or to the Services, including but not limited to Amazon Transaction Information, that is not known to the general public ("**Confidential Information**"). You agree that: (a) all Confidential Information will remain Amazon's exclusive property; (b) you will use Confidential Information only as is reasonably necessary for your participation in the Services; (c) you will not otherwise disclose Confidential Information to any other Person; and (d) you will take all reasonable measures to protect the Confidential Information against any use or disclosure that is not expressly permitted in this Agreement. You may not issue any press release or make any public statement related to the Services, or use our name, trademarks or logo, in any way (including in promotional material) without our advance written permission, or misrepresent or embellish the relationship between us in any way.

12. Force Majeure.

We will not be liable for any delay or failure to perform any of our obligations under this Agreement by reasons, events or other matters beyond our reasonable control.

13. Relationship of Parties.

Subject to the Transaction Processing Service Terms (if the Elected Country for a Service is the United States), you and we are independent contractors, and nothing in this Agreement will create any partnership, joint venture, agency, franchise, sales representative, or employment relationship between us. You will have no authority to make or accept any offers or representations on our behalf. This Agreement will not create an exclusive relationship between you and us. Nothing expressed or mentioned in or implied from this Agreement is intended or will be construed to give to any person other than the parties to this Agreement any legal or equitable right, remedy, or claim under or in respect to this Agreement. This Agreement and all of the representations, warranties, covenants, conditions, and provisions in this Agreement are intended to be and are for the sole and exclusive benefit of Amazon, you, and customers. As between you and us, you will be solely responsible for all obligations associated with the use of any third party service or feature that you permit us to use on your behalf, including compliance with any applicable terms of use. You will not make any statement, whether on your site or otherwise, that would contradict anything in this section.

14. Use of Amazon Transaction Information.

You will not, and will cause your Affiliates not to, directly or indirectly: (a) disclose any Amazon Transaction Information (except that you may disclose that information solely as necessary for you to perform your obligations under this Agreement if you ensure that every recipient uses the information only for that purpose and complies with the restrictions applicable to you related to that information); (b) use any Amazon Transaction Information for any marketing or promotional purposes whatsoever, or otherwise in any way inconsistent with our or your privacy policies or applicable Law; (c) contact a Person that has ordered Your Product with the intent to collect any amounts in connection therewith or to influence that Person to make an alternative transaction; (d) disparage us, our Affiliates, or any of their or our respective products or services or any customer; or (e) target communications of any kind on the basis of the intended recipient being an Amazon Site user. In addition, you may only use tools and methods that we designate to communicate with Amazon Site users regarding Your Transactions, including for the purpose of scheduling, communicating, or cancelling the fulfillment of Your Products. The terms of this [Section 14](#) do not prevent you from using other information that you acquire without reference to Amazon Transaction Information for any purpose, even if that information is identical to Amazon Transaction Information, provided that you do not target communications on the basis of the intended recipient being an Amazon Site user.

15. Suggestions and Other Information.

If you or any of your Affiliates elect to provide or make available suggestions, comments, ideas, improvements, or other feedback or materials to us in connection with or related to any Amazon Site or Service (including any related Technology), we will be free to use, disclose, reproduce, modify, license, transfer and otherwise distribute, and exploit any of the foregoing information or materials in

any manner. In order to cooperate with governmental requests, to protect our systems and customers, or to ensure the integrity and operation of our business and systems, we may access and disclose any information we consider necessary or appropriate, including but not limited to user contact details, IP addresses and traffic information, usage history and posted content.

16. Modification.

We may amend any of the terms and conditions contained in this Agreement at any time and at our sole discretion. Any changes will be effective upon the posting of such changes on Seller Central or on the applicable Amazon Site, and you are responsible for reviewing these locations and informing yourself of all applicable changes or notices. All notice of changes to the General Terms and the Service Terms will be posted for at least 30 days. Changes to Program Policies may be made without notice to you. You should refer regularly to Seller Central to review the current Agreement (including the Service Terms and Program Policies) and to be sure that the items you offer can be offered via the applicable Service. YOUR CONTINUED USE OF A SERVICE AFTER AMAZON'S POSTING OF ANY CHANGES WILL CONSTITUTE YOUR ACCEPTANCE OF SUCH CHANGES OR MODIFICATIONS.

17. Password Security.

Any password we provide to you may be used only during the Term to access Seller Central (or other tools we provide) to use the Services, electronically accept Your Transactions, and review your completed transactions. You are solely responsible for maintaining the security of your password. You may not disclose your password to any third party (other than third parties authorized by you to use your account in accordance with this Agreement) and are solely responsible for any use of or action taken under your password. If your password is compromised, you must immediately change your password.

18. Miscellaneous.

The Governing Laws will govern this Agreement, without reference to rules governing choice of laws or the Convention on Contracts for the International Sale of Goods. If the Elected Country is Japan, Amazon and you both consent that any dispute with Amazon or its Affiliates or claim relating in any way to your use of the Services or this Agreement as it relates to your use of the Services in Japan will be adjudicated in the Governing Courts, and you consent to exclusive jurisdiction and venue in the Governing Courts. If the Elected Country is the United States, Canada or Mexico, **Amazon and you both consent that any dispute with Amazon or its Affiliates or claim relating in any way to this Agreement or your use of the Services will be resolved by binding arbitration as described in this paragraph, rather than in court**, except that (i) you may assert claims in a small claims court that is a Governing Court if your claims qualify and (ii) you or we may bring suit in the Governing Courts, submitting to the jurisdiction of the Governing Courts and waiving our respective rights to any other jurisdiction, to enjoin infringement or other misuse of intellectual property rights.

There is no judge or jury in arbitration, and court review of an arbitration award is limited. However, an arbitrator can award on an individual basis the same damages and relief as a court (including injunctive and declaratory relief or statutory damages), and must follow the terms of this Agreement as a court would. To begin an arbitration proceeding, you must send a letter requesting arbitration and describing your claim to our registered agent, CSC Services of Nevada, Inc., 2215-B Renaissance Drive, Las Vegas, NV 89119. The arbitration will be conducted by the American Arbitration Association (AAA) under its rules, including the AAA's Supplementary Procedures for Consumer-Related Disputes. Payment of all filing, administration and arbitrator fees will be governed by the AAA's rules. We will reimburse those fees for claims totaling less than \$10,000 unless the arbitrator determines the claims are frivolous. Likewise, Amazon will not seek attorneys' fees and costs from you in arbitration unless the arbitrator determines the claims are frivolous. You may choose to have the arbitration conducted by telephone, based on written submissions, or in person in the county where you live or at another mutually agreed location. **Amazon and you each agree that any dispute resolution proceedings will be conducted only on an individual basis and not in a class, consolidated or representative action.** If for any reason a claim proceeds in court rather than in arbitration **Amazon and you each waive any right to a jury trial.**

You may not assign this Agreement, by operation of law or otherwise, without our prior written consent. Subject to that restriction, this Agreement will be binding on, inure to, and be enforceable against the parties and their respective successors and assigns. We may perform any of our obligations or exercise any of our rights under this Agreement through one or more of our Affiliates. Our failure to enforce your strict performance of any provision of this Agreement will not constitute a waiver of our right to enforce such provision or any other provision of this Agreement subsequently.

We have the right in our sole discretion to determine the content, appearance, design, functionality and all other aspects of the Services, including by redesigning, modifying, removing, or restricting access to any of them.

Because Amazon is not your agent (except for the limited purpose set out in the Transaction Processing Service Terms (if the Elected Country for a Service is the United States)), or the customer's agent for any purpose, Amazon will not act as either party's agent in connection with resolving any disputes between participants related to or arising out of any transaction.

We will send all notices and other communications regarding this Agreement to you at the e-mail addresses you designated for notifications and updates in your program application or within Seller Central, or by any other means then specified by Amazon. We may also communicate with you electronically and in other media, and you consent to such communications regardless of any "E-mail Preferences" (or similar preferences or requests) you may have indicated on the applicable Amazon Site, on Seller Central, or by any other means. You may change your e-mail addresses and certain other information in Seller Central. You will ensure that all of your information is up to date and

accurate at all times. You must send all notices and other communications relating to Amazon to our Merchant Services Team by using the [Contact Us](#) form.

This Agreement incorporates and you accept the applicable Service Terms and Program Policies, which Amazon may modify from time to time. If any provision of this Agreement is deemed unlawful, void, or for any reason unenforceable, then that provision will be deemed severable from these terms and conditions and will not affect the validity and enforceability of any remaining provisions. If the Elected Country is Canada, then it is the express wish of the parties that this Agreement and the applicable Service Terms and Program Policies have been drafted in English. (The following is a French translation of the preceding sentence: Si le pays de service est le Canada, les parties conviennent que la présente autorisation et tous les termes et conditions applicables s'y rattachant soient rédigés en anglais.) If the Elected Country is any country other than Japan, we may make available translations to this Agreement and the applicable Service Terms and Program Policies, but the English version will control. This Agreement represents the entire agreement between the parties with respect to the Services and related subject matter and supersedes any previous or contemporaneous oral or written agreements and understandings.

Definitions

As used in this Agreement, the following terms have the following meanings:

"Affiliate" means, with respect to any entity, any other entity that directly or indirectly controls, is controlled by, or is under common control with that entity.

"Amazon Associated Properties" means any website or other online point of presence, mobile application, service or feature, other than an Amazon Site, through which any Amazon Site, any Webstore Site, or products or services available on any of them, are syndicated, offered, merchandised, advertised or described.

"Amazon Contracting Party" means the party outlined below.

- If the Elected Country is Canada:

Service	Amazon Contracting Party
Selling on Amazon	Amazon Services International, Inc.
Selling on Amazon (if your account is enabled to list Optional Coverage Plans)	Amazon Services Contracts, Inc.
Fulfillment by Amazon	Amazon.com.ca, Inc.
Amazon Clicks	Amazon Services International, Inc.

- If the Elected Country is Japan:

Service	Amazon Contracting Party
Selling on Amazon	Amazon Services International, Inc.
Fulfillment by Amazon	Amazon Japan Logistics K.K.
Amazon Clicks	Amazon Services International, Inc.

- If the Elected Country is Mexico:

Service	Amazon Contracting Party
Selling on Amazon	Servicios Comerciales Amazon México S. de R.L. de C.V.
Fulfillment by Amazon	Servicios Comerciales Amazon México S. de R.L. de C.V.

- If the Elected Country is the United States:

Service	Amazon Contracting Party
Selling on Amazon	Amazon Services LLC
Selling on Amazon (if your account is enabled to list Optional Coverage Plans)	Amazon Services Contracts, Inc.
Fulfillment by Amazon	Amazon Services LLC
Amazon Webstore	Amazon Services LLC
Amazon Clicks	Amazon Services LLC
Transaction Processing Services	Amazon Payments, Inc., provided that if you registered for or used a Service prior to June 30, 2014, then Amazon Services LLC may in its discretion perform the Transaction Processing Services

"Amazon Site" means, as applicable, the CA Amazon Site, the JP Amazon Site, the MX Amazon Site, or the US Amazon Site.

"Amazon Transaction Information" means, collectively, Order Information and any other data or information acquired by you or your Affiliates from Amazon, its Affiliates, or otherwise as a result of this Agreement, the transactions contemplated by this Agreement, or the parties' performance under this Agreement.

"CA Amazon Site" means the website, the primary home page of which is identified by the url www.amazon.ca, and any successor or replacement of such website.

"Content" means copyrightable works under applicable Law.

"Excluded Products" means the items described on the applicable [Restricted Products pages](#) in Seller Central, any other applicable Program Policy, or any other information made available to you by Amazon.

"Governing Courts" means the applicable one of the following:

- the state or Federal court in King County, Washington (if the Elected Country is Canada, Mexico or the United States),
- Tokyo District Court or Tokyo Summary Court depending upon the amount of the claim made (if the Elected Country is Japan),

"Governing Laws" means the applicable one of the following:

- the laws of the State of Washington, United States together with the Federal Arbitration Act and other applicable federal law (if the Elected Country is Canada, Mexico or the United States),
- the laws of Japan (if the Elected Country is Japan).

"Insurance Limits" means the applicable one of the following:

- One Million Canadian Dollars (\$1,000,000) (if the Elected Country is Canada),
- One Hundred Million Japanese Yen (¥100,000,000) (if the Elected Country is Japan),
- Ten Million Mexican Pesos (\$10,000,000) (if the Elected Country is Mexico),
- One Million U.S. Dollars (\$1,000,000) (if the Elected Country is the United States).

"Insurance Threshold" means the applicable one of the following:

- Ten Thousand Canadian Dollars (\$10,000) (if the Elected Country is Canada),
- One Million Japanese Yen (¥1,000,000) (if the Elected Country is Japan),
- One Hundred Thousand Mexican Pesos (\$100,000) (if the Elected Country is Mexico),
- Ten Thousand U.S. Dollars (\$10,000) (if the Elected Country is the United States).

"Intellectual Property Right" means any patent, copyright, Trademark, domain name, moral right, trade secret right, or any other intellectual property right arising under any Laws and all ancillary and related rights, including all rights of registration and renewal and causes of action for violation, misappropriation or infringement of any of the foregoing.

"JP Amazon Site" means that website, the primary home page of which is identified by the url www.amazon.co.jp, and any successor or replacement of such website.

"Law" means any law, ordinance, rule, regulation, order, license, permit, judgment, decision or other requirement, now or in the future in effect, of any governmental authority (e.g. on a federal, state, or provincial level, as applicable) of competent jurisdiction.

"Local Currency" means the applicable one of the following:

U.S. Dollars (if the Elected Country is the United States),
Canadian Dollars (if the Elected Country is Canada),
Mexican Pesos (if the Elected Country is Mexico),
Japanese Yen (if the Elected Country is Japan).

"MX Amazon Site" means the website, the primary home page of which is identified by the url www.amazon.com.mx, and any successor or replacement of such website.

"Optional Coverage Plans" means warranties, extended service plans and related offerings, in each case as determined by us, that you offer.

"Order Information" means, with respect to any of Your Products ordered through an Amazon Site or a Webstore Site, the order information and shipping information that we provide or make available to you.

"Person" means any individual, corporation, partnership, limited liability company, governmental authority, association, joint venture, division or other cognizable entity, whether or not having distinct legal existence.

"Program Policies" means all terms, conditions, policies, guidelines, rules and other information on the applicable Amazon Site or on Seller Central, including those shown on the "Policies and Agreements" section of Seller Central or elsewhere in the "Help" section of Seller Central (and, for purposes of the Fulfillment by Amazon Service, specifically including the [FBA Guidelines](#)). All Program Policies applicable to Webstore by Amazon also apply to Amazon Webstore, unless otherwise specifically stated.

"Promotion Site" means that ecommerce website, the primary home page of which is identified by the URL www.sellername.amazonwebstore.com, in which "sellername" is a name representing you that we elect to include in such URL.

"Sales Proceeds" means the gross proceeds from any of Your Transactions, including all shipping and handling, gift wrap and other charges, and including taxes and customs duties to the extent specified in the applicable [Tax Policies](#).

"Seller Central" means the online portal and tools made available by Amazon to you, for your use in managing your orders, inventory and presence on a particular Amazon Site, a Webstore Site, or any other online point of presence.

"Service" means each of the following services: Selling on Amazon, Amazon Webstore, Fulfillment by Amazon, Amazon Clicks (including Amazon Product Ads, Amazon Sponsored Products and Amazon Text Ads), and, if the Elected Country for a Service is the United States, the Transaction Processing Services, together in each case with any related services and materials we make available.

"Service Terms" means the service terms applicable to each Service, which are made part of this Agreement upon the date you elect to register for or use the applicable Service, and any subsequent modifications we make to those terms.

"Technology" means any: (a) Ideas, procedures, processes, systems, methods of operation, concepts, principles and discoveries protected or protectable under the Laws of any jurisdiction; (b) interfaces, protocols, glossaries, libraries, structured XML formats, specifications, grammars, data formats, or other similar materials, and (c) software, hardware, code, technology or other functional item.

"Trademark" means any trademark, service mark, trade dress (including any proprietary "look and feel"), trade name, other proprietary logo or insignia or any other source or business identifier, protected or protectable under any Laws.

"US Amazon Site" means that website, the primary home page of which is identified by the url www.amazon.com, and any successor or replacement of such website.

"Webstore Service" has the meaning described in the Webstore Service Terms.

"Webstore Site" has the meaning described in the Webstore Service Terms.

"Your Materials" means all Technology, Your Trademarks, Content, Your Product information, data, materials, and other items or information provided or made available by you or your Affiliates to Amazon or its Affiliates.

"Your Personnel" means any third party warranting, administering or otherwise involved in the offer, sale, performance or fulfillment of Your Products, including any of your employees, representatives, agents, contractors, or subcontractors.

"Your Product" means any product or service (including Optional Coverage Plans) that: (a) you offer through the Webstore Service or the Selling on Amazon Service; (b) is made available for advertising by you through the Amazon Clicks Service; or (c) is fulfilled or otherwise processed through the Fulfillment by Amazon Service.

"Your Sales Channels" means all sales channels and other means through which you or any of your Affiliates offers products or services, other than physical stores.

"Your Taxes" means any and all sales, goods and services, use, excise, premium, import, export, value added, consumption and other taxes, regulatory fees, levies (specifically including environmental levies) or charges and duties assessed, incurred or required to be collected or paid for any reason (a) in connection with any advertisement, offer or sale of products or services by you on or through or in connection with the Services; (b) in connection with any products or services provided for which Your Products are, directly or indirectly, involved as a form of payment or exchange; or (c) otherwise in connection with any action, inaction or omission of you or your Affiliates, or any Persons providing products or services, or your or their respective employees, agents, contractors or representatives, for which Your Products are, directly or indirectly, involved as a form of payment or exchange. Also, if the Elected Country is the United States, Mexico or Canada, as it is used in the Fulfillment by Amazon Service Terms, this defined term also means any of the types of taxes, duties, levies or fees mentioned above that are imposed on or collectible by Amazon or any of its Affiliates in connection with or as a result of fulfillment services including the storage of inventory or packaging of Your Products and other materials owned by you and stored by Amazon, shipping, gift wrapping or other actions by Amazon in relation to Your Products pursuant to the Fulfillment by Amazon Service Terms.

"Your Trademarks" means Trademarks of yours that you provide to us: (a) in non-text form for branding purposes; and (b) separate from (and not embedded or otherwise incorporated in) any product specific information or materials.

"Your Transaction" means any sale of Your Product(s) through an Amazon Site or any Webstore Site.

Selling on Amazon Service Terms

The Selling on Amazon Service ("**Selling on Amazon**") is a Service that allows you to offer certain products and services directly on the Amazon Sites (which, if the Elected Country is the United States, includes a Promotion Site that we may make available from time to time during the Term and on which certain of Your Products may be offered).

These Selling on Amazon Service Terms are part of the Agreement, but, unless specifically provided otherwise, concern and apply only to your participation in Selling on Amazon. BY REGISTERING FOR OR USING THE SELLING ON AMAZON SERVICE, YOU (ON BEHALF OF YOURSELF OR THE BUSINESS YOU REPRESENT) AGREE TO BE BOUND BY THE AGREEMENT, INCLUDING THESE SELLING ON AMAZON SERVICE TERMS. **NOTWITHSTANDING THE PREVIOUS SENTENCE, IF YOU HAVE ENTERED INTO A SEPARATE AGREEMENT THAT PERMITS YOU TO OFFER YOUR PRODUCTS THROUGH A PARTICULAR AMAZON SITE (E.G., A MERCHANTS@AMAZON.COM PROGRAM AGREEMENT, MERCHANTS@AMAZON.CO.JP PROGRAM AGREEMENT OR ANY PREDECESSOR OF THOSE AGREEMENTS), THEN TO THE EXTENT THAT YOU CONTINUE TO LIST AND SELL YOUR PRODUCTS ON THAT AMAZON SITE PURSUANT TO SUCH SEPARATE AGREEMENT, TRANSACTIONS OF YOUR PRODUCTS ON THAT AMAZON SITE AND ANY TAX SERVICES WE MAKE AVAILABLE UNDER THAT AGREEMENT ARE GOVERNED BY THE TERMS OF THAT AGREEMENT AND NOT BY THESE SELLING ON AMAZON SERVICE TERMS.**

5-1 Your Product Listings and Orders

5-1.1 Products and Product Information. You will provide in the format we require accurate and complete Required Product Information for each product or service that you offer through any Amazon Site and promptly update that information as necessary to ensure it at all times remains accurate and complete. You will also ensure that Your Materials, Your Products (including packaging) and your offer and subsequent sale of any of the same on any Amazon Site comply with all applicable Laws (including all minimum age, marking and labeling requirements) and do not contain any sexually explicit (except to the extent expressly permitted under our applicable Program Policies), defamatory or obscene materials. You may not provide any information for, or otherwise seek to offer any Excluded Products on any Amazon Sites; or provide any URL Marks for use, or request that any URL Marks be used, on any Amazon Site.

5-1.2 Product Listing; Merchandising; Order Processing. We will enable you to list Your Products on a particular Amazon Site, and conduct merchandising and promote Your Products as permitted by us (including via the Amazon Associated Properties or any other functions, features, advertising, or programs on or in connection with the applicable Amazon Site). We may use mechanisms that rate, or allow shoppers to rate, Your Products and your performance as a seller and Amazon may make these ratings and feedback publicly available. We will provide Order Information to you for each order of Your Products through the applicable Amazon Site. We will also receive all Sales Proceeds on your

behalf for each of these transactions and will have exclusive rights to do so, and will remit them to you in accordance with these Selling on Amazon Service Terms.

S-1.3 Shipping and Handling Charges. For Your Products ordered by customers on or through an Amazon Site that are not fulfilled using Fulfillment by Amazon, you will determine the shipping and handling charges subject to our Program Policies and standard functionality (including any category-based shipping and handling charges we determine, such as for products offered by sellers on the Individual selling plan and BMVD Products generally). When we determine the shipping and handling charges, you will accept them as payment in full for your shipping and handling. Please refer to the Fulfillment by Amazon Service Terms for Your Products that are fulfilled using Fulfillment by Amazon.

S-1.4 Credit Card Fraud. We will bear the risk of credit card fraud (i.e., a fraudulent purchase arising from the theft and unauthorized use of a third party's credit card information) occurring in connection with Your Transactions except in connection with Seller-Fulfilled Products that are not fulfilled strictly in accordance with the Order Information and Shipment Information. You will bear all other risk of fraud or loss. We may in our sole discretion withhold for investigation, refuse to process, restrict shipping destinations for, stop and/or cancel any of Your Transactions. You will stop or cancel orders of Your Products if we ask you to do so. If you have already transferred Your Products to a carrier or shipper when we ask you to stop or cancel an order, you will use commercially reasonable efforts to stop or cancel delivery of that order. You will refund any customer (in accordance with Section S-2.2) that has been charged for an order that we stop or cancel.

S-2 Sale and Fulfillment; Refunds and Returns.

S-2.1 Sale and Fulfillment. Other than as described in the Fulfillment by Amazon Service Terms for each Amazon Site for which you register or use the Selling on Amazon Service, you will: (a) source, offer, sell and fulfill your Seller-Fulfilled Products, and source and, offer and sell your Amazon-Fulfilled Products, in each case in accordance with the terms of the applicable Order Information, this Agreement, and all terms provided by you or us and displayed on the applicable Amazon Site at the time of the order and be solely responsible for and bear all risk for those activities; (b) package each of Your Products in a commercially reasonable manner complying with all applicable packaging and labeling requirements and ship each of Your Products on or before its Expected Ship Date; (c) retrieve Order Information at least once each business day; (d) only cancel Your Transactions as permitted pursuant to your terms and conditions appearing on the applicable Amazon Site at the time of the applicable order or as may be required under this Agreement; (e) fulfill Your Products throughout the Elected Country (except to the extent prohibited by Law or this Agreement); (f) provide to Amazon information regarding fulfillment and order status and tracking (to the extent available), in each case as requested by us using the processes designated by us, and we may make any of this information publicly available; (g) comply with all Street Date instructions; (h) ensure that you are the seller of each of Your Products; (i) include an order-specific packing slip, and, if applicable, any tax invoices, within each shipment of Your Products; (j) identify yourself as the seller of each of Your Products on

all packing slips or other information included or provided in connection with Your Products and as the Person to which a customer may return the applicable product; and (k) except as expressly permitted by this Agreement, not send customers emails confirming orders or fulfillment of Your Products. If any of Your Products are fulfilled using Fulfillment by Amazon, the Fulfillment by Amazon Service Terms for the applicable Amazon Site will apply to the storage, fulfillment and delivery of such Amazon-Fulfilled Products.

S-2.2 Cancellations, Returns and Refunds. For all of Your Products that are not fulfilled using Fulfillment by Amazon, you will accept and process cancellations, returns, refunds and adjustments in accordance with this Agreement and the Amazon Refund Policies for the applicable Amazon Site published at the time of the applicable order, and we may inform customers that these policies apply to Your Products. Except as otherwise described in the Program Policies, you will determine and calculate the amount of all refunds and adjustments (including any taxes, shipping and handling or other charges) or other amounts to be paid by you to customers in connection with Your Transactions, using functionality we enable for your account. This functionality may be modified or discontinued by us at any time without notice. You will route all payments to customers in connection with Your Transactions through Amazon. We will provide those payments to the customer (which may be in the same payment form originally used to purchase Your Product or as otherwise determined by us), and you will reimburse us for all amounts we pay. For all of Your Products that are fulfilled using Fulfillment by Amazon, the Amazon Refund Policies for the applicable Amazon Site published at the time of the applicable order will apply and you will comply with them. You will promptly provide refunds and adjustments that you are obligated to provide under the applicable Amazon Refund Policies and as required by Law, and in no case later than thirty (30) days after the obligation arises.

S-3 Problems with Your Products.

S-3.1 Delivery Errors and Nonconformities; Recalls. You are solely responsible for any non-performance, non-delivery, misdelivery, theft or other mistake or act in connection with the fulfillment of Your Products, except to the extent caused by: (a) credit card fraud for which we are responsible under [Section S-1.4](#); or (b) our failure to make available to you Order Information as it was received by us or resulting from address verification. Notwithstanding the previous sentence, for those of Your Products that are fulfilled using Fulfillment by Amazon, if any, the Fulfillment by Amazon Service Terms for the applicable Amazon Site will apply to non-delivery, misdelivery, theft or other mistake or act in connection with the fulfillment of those of Your Products. You are also responsible for any non-conformity or defect in, or any public or private recall of, any of Your Products or other products provided in connection with Your Products. You will notify us promptly as soon as you have knowledge of any public or private recalls of Your Products or other products provided in connection with Your Products.

S-3.2 A-to-z Guarantee and Chargebacks. If we inform you that we have received a claim under the "A-to-z Guarantee" offered on a particular Amazon Site, or any chargeback or other dispute,

concerning one of Your Transactions, you will deliver to us in a format and manner we specify: (a) proof of fulfillment of Your Product(s) (as applicable); (b) the applicable Amazon order identification number; (c) a description of Your Product(s) (as applicable); and (d) any terms provided by you or us and displayed on the Amazon Site at the time of the transaction in question. If you fail to comply with the prior sentence, or if the claim, chargeback, or dispute is not caused by: (i) credit card fraud for which we are responsible under [Section S-1.4](#); or (ii) our failure to make your Order Information available as the same was received by us or resulting from address verification, then you will promptly reimburse us in accordance with the Service Fee Payments section of this Agreement for the amount of the customer purchase (including the Purchase Price, all associated shipping and handling charges and all taxes, but excluding any associated Referral Fees retained and not subject to refund by Amazon) and all associated credit card association, bank or other payment processing, re-presentment and/or penalty fees associated with the original purchase and any chargeback or refund, in each case to the extent paid or payable by us or our Affiliates. If the Elected Country is Japan and we receive a claim under the "A-to-z Guarantee" concerning one of Your Transactions and we determine that we are responsible for that claim then we will purchase the returned products from the customer.

S-4 Parity with Your Sales Channels.

Subject to this [Section S-4](#), you are free to determine which of Your Products you wish to offer on a particular Amazon Site. You will maintain parity between the products you offer through Your Sales Channels and the products you list on any Amazon Site by ensuring that : (a) the Purchase Price and every other term of offer or sale of Your Product (including associated shipping and handling charges, Shipment Information, any "low price" guarantee, rebate or discount, any free or discounted products or other benefit available as a result of purchasing one or more other products, and terms of applicable cancellation, return and refund policies) is at least as favorable to Amazon Site users as the most favorable terms upon which a product is offered or sold via Your Sales Channels (excluding consideration of Excluded Offers); (b) customer service for Your Products is at least as responsive and available and offers at least the same level of support as the most favorable customer services offered in connection with any of Your Sales Channels (this requirement does not apply to customer service for payment-related issues on Your Transactions, which we will provide); and (c) the Content, product and service information and other information under [Section S-1.1](#) regarding Your Products that you provide to us is of at least the same level of quality as the highest quality information displayed or used in Your Sales Channels. If you become aware of any non-compliance with (a) above, you will promptly compensate adversely affected customers by making appropriate refunds to them in accordance with [Section S-2.2](#). For Amazon-Fulfilled Products, if the shipping and handling charges associated with the sale and fulfillment of any of Your Products offered on an Amazon Site are included (and not separately stated) in the item price listed for Your Product (collectively a "**Shipping Inclusive Purchase Price**"), then the parity obligation in (a) above will be satisfied if the Shipping Inclusive Purchase Price and each other term of offer or sale for the product on the Amazon Site are at least as favorable to Amazon Site users as the purchase price and each other term of offer or sale for

the product (including any and all separately stated shipping and handling charges) pursuant to which the product or service is offered or sold via any of Your Sales Channels.

S-5 Compensation.

You will pay us: (a) the applicable Referral Fees; (b) any applicable Variable Closing Fee; (c) the non-refundable Selling on Amazon Subscription Fee in advance each month; and (d) any other applicable fees described in this Agreement (including any applicable Program Policies). **"Selling on Amazon Subscription Fee"** means the fee specified as such on the Selling on Amazon Fee Schedule for the applicable Amazon Site at the time such fee is payable. With respect to each of Your Transactions: (i) **"Sales Proceeds"** has the meaning set out in this Agreement; (ii) **"Variable Closing Fee"** means the applicable fee, if any, as specified on the Variable Closing Fee Schedule for the applicable Amazon Site; and (iii) **"Referral Fee"** means the applicable fee based on the Sales Proceeds from Your Transaction through the applicable Amazon Site specified on the Selling on Amazon Fee Schedule for that Amazon Site at the time of Your Transaction, based on the categorization by Amazon of the type of product that is the subject of Your Transaction; provided, however, that Sales Proceeds will not include any shipping charges set by us in each of the following two cases: (y) in the case of Your Transactions that consist solely of products fulfilled using Fulfillment by Amazon; and (z) in the case of Media Products.

S-6 Remittance of Sales Proceeds & Refunds.

Except as otherwise stated in this Agreement, we will remit to you on a bi-weekly (14 day) (or at our option, more frequent) basis, which may vary for each Elected Country, any Sales Proceeds received by us or our Affiliates but not previously remitted to you as of the date that is two (2) business days prior to the date of remittance (the **"Remittance Calculation Date"**) (which you will accept as payment in full for Your Transactions), less: (a) the Referral Fees; (b) the applicable Variable Closing Fee; (c) any Selling on Amazon Subscription Fees; and (d) any other applicable fees described in this Agreement (including any applicable Program Policies). When you either initially provide or later change Your Bank Account information, the Remittance Calculation Date may be deferred by up to 14 days. You will not have the ability to initiate or cause payments to be remitted to you. For sellers that registered after October 30, 2011 and are on the Individual selling plan, the remittance amount will not include Sales Proceeds from the 14-day period before the date of remittance. If you refund money to a customer in connection with one of Your Transactions, and the refund is routed through us (or our Affiliate), on the next available Remittance Calculation Date we will refund to you the amount of the Referral Fee paid by you to us attributable to the amount of the customer refund (including refunded taxes and customs duties only to the extent specified in the applicable Tax Policies), less the Refund Administration Fee for each of Your Products refunded that is not a BMVD Product, which amount we may retain as an administrative fee; provided, however, that in the case of a complete refund of Sales Proceeds for a Media Product, we will refund to you the full amount of any Variable Closing Fee paid by you to us (and in the case of a partial refund of Sales Proceeds for a Media

Product, we will not refund to you any portion of any Variable Closing Fee paid by you to us). We will remit any amounts to be refunded by us pursuant to this subsection from time to time together with the next remittance to be made by us to you. **"Refund Administration Fee"** means the applicable fee described on the Refund Administration Fee Schedule for the applicable Amazon Site.

S-7 Control of Amazon Sites.

We have the right in our sole discretion to determine the content, appearance, design, functionality and all other aspects of the Amazon Sites, including by redesigning, modifying, removing or restricting access to any of them, and by suspending, prohibiting or removing any listing.

S-8 Effect of Termination.

Upon termination of these Selling on Amazon Service Terms in connection with a particular Amazon Site, all rights and obligations of the Parties under these Selling on Amazon Service Terms with regard to such Amazon Site will be extinguished, except that the rights and obligations of the Parties with respect to Your Transactions occurring during the Term will survive the termination or expiration of the Term.

Selling on Amazon Definitions

"Amazon-Fulfilled Products" means any of Your Products that are fulfilled using the Fulfillment by Amazon Service.

"Amazon Refund Policies" means the return and refund policies published on the applicable Amazon Site and applicable to products and services offered via that Amazon Site.

"BMVD Product" means any book, magazine or other publication, sound recording, video recording, and/or other media product in any format, including any subscription, in each case excluding any software product, computer game, and/or video game.

"Excluded Offer" means any discount, rebate, promotional offer, or other term of offer and/or sale that you: (a) have attempted to make available through a particular Amazon Site but that we do not honor or support (but only until such time as we honor or support the same on such Amazon Site); or (b) make available solely to Third Parties that either (i) purchase products solely for resale and who are not end users of such products (i.e., wholesale purchasers), or (ii) if the Elected Country is Canada, Mexico or the United States, have affirmatively elected and opted-in to participate in your or one of your Affiliates' membership-based customer loyalty or customer incentive programs.

"Expected Ship Date" means, with respect to any of Your Products, either: (a) the end of the shipping availability period (which begins as of the date on which the relevant order is placed by the customer), or the shipping availability date, as applicable, specified by you in the relevant

inventory/product data feed for Your Product; or (b) if you do not specify shipping availability information in such inventory/product data feed or that Your Product is in a product category that Amazon designates as requiring shipment within two (2) business days, two (2) business days after the date on which the relevant order is placed by the customer.

"Media Product" means any book, magazine or other publication, sound recording, video recording, software product, computer game, videogame, or other media product in any format, including any related subscription, offered through an Amazon Site.

"Purchase Price" means the total amount payable or paid for Your Product (including taxes and shipping and handling charges only to the extent specified in the applicable Tax Policies).

"Remittance Calculation Date" is defined in Section S-6.

"Required Product Information" means, with respect to each of Your Products in connection with a particular Amazon Site, the following (except to the extent expressly not required under the applicable Program Policies): (a) description, including as applicable, location-specific availability and options, scheduling guidelines and service cancellation policies; (b) SKU and UPC/EAN/JAN numbers, and other identifying information as Amazon may reasonably request; (c) information regarding in-stock status and availability, shipping limitations or requirements, and Shipment Information (In each case, in accordance with any categorizations prescribed by Amazon from time to time); (d) categorization within each Amazon product category and browse structure as prescribed by Amazon from time to time; (e) digitized image that accurately depicts only Your Product, complies with all Amazon image guidelines, and does not include any additional logos, text or other markings; (f) Purchase Price; (g) shipping and handling charge (in accordance with our standard functionality); (h) any text, disclaimers, warnings, notices, labels, warranties or other content required by applicable Law to be displayed in connection with the offer, merchandising, advertising or sale of Your Product; (i) any vendor requirements, restocking fees or other terms and conditions applicable to such product that a customer should be aware of prior to purchasing the product; (j) brand; (k) model; (l) product dimensions; (m) weight; (n) a delimited list of technical specifications; (o) SKU and UPC/EAN/JAN numbers (and other identifying information as we may reasonably request) for accessories related to Your Product that is available in our catalog; (p) the state or country Your Product ships from; and (q) any other information reasonably requested by us (e.g., the condition of used or refurbished products).

"Seller-Fulfilled Products" means any of Your Products that are not fulfilled using the Fulfillment by Amazon Service.

"Shipment Information" means, with respect to any of Your Products, the estimated or promised shipment and delivery date.

"Street Date" means the date(s), if any, specified by the manufacturer, distributor and/or licensor of a product as the date before which specified information regarding such product (e.g., title of a book) should not be disclosed publicly, or such product should not be delivered or otherwise made available to customers.

"URL Marks" means any Trademark, or any other logo, name, phrase, identifier or character string, that contains or incorporates any top level domain (e.g., .com, .edu, .ca, .fr, .jp) or any variation of a top level domain (e.g., dot com, dotcom, net, or com).

"Your Transaction" is defined in the General Terms of this Agreement; however, as used in these Selling on Amazon Service Terms, it means any and all such transactions through Selling on Amazon only.

Webstore Service Terms

Amazon Webstore (which, for purposes of this Agreement, includes Webstore by Amazon, unless specifically stated otherwise) (the "**Webstore Service**") provides access to and use of an e-commerce website through which you can offer and sell Your Products (a "**Webstore Site**"). The Webstore Service is not currently available in Canada, Mexico or Japan.

These Webstore Service Terms are part of this Agreement, and, unless specifically provided otherwise, concern and apply only to your participation in the Webstore Service. BY REGISTERING FOR OR USING THE WEBSTORE SERVICE, YOU (ON BEHALF OF YOURSELF OR THE BUSINESS YOU REPRESENT) AGREE TO BE BOUND BY THE AGREEMENT, INCLUDING THESE WEBSTORE SERVICE TERMS.

W-1 Listing and Promotion.

Each sale of Your Products through your Webstore Site is a sale by you. You will determine what is for sale on your Webstore Site, but you may not list any product on the Webstore Site that is an Excluded Product. You will ensure that you list all of Your Products in accordance with this Agreement, including any applicable Program Policies.

W-2 Information.

You will provide in the format we require accurate and complete Webstore Required Product Information and all other information requested by us to process payments for you and to otherwise operate your Webstore Site. You will update such information as necessary to ensure it at all times remains accurate and complete. If you provide us with any images of Your Product, you will, unless we otherwise agree, first remove any logos, text or other marking included on the image except for any logos, text or other marking that actually appears on the product. You will either: (a) upload to us the "shipping confirmation files" as required by us, including all shipment notification, shipping status and order tracking information requested by us from time to time, and any other information as requested by us to process payments based on Your Product shipment status; provided, that if you are using Fulfillment by Amazon to fulfill any of your customer orders, the Fulfillment by Amazon Service Terms will apply with respect to such orders; or (b) use the Manage Your Orders tool in Seller Central to manage and upload the required "shipping confirmation files" from Seller Central. We may provide this shipment and payment related information to users of the Webstore Site. We will make available certain information and reports relating to Your Transactions as we determine and have no obligation to make available any other information. We may use mechanisms that rate, or may allow users to rate, your performance as a seller, and may post those ratings and feedback on the Webstore Site or any Amazon Site or otherwise make it publicly available. Any use on your Webstore Site of content displayed on an Amazon Site, or links to an Amazon Site, will be subject to the terms of the [Amazon Associates Operating Agreement](#).

W-3 Your Product Transactions.

W-3.1 General; Sale and Fulfillment. You will be solely responsible for, and bear all risk and liability for, sourcing, storing, selling, and fulfilling all of Your Products. As such, you are responsible for any non-conformity or defects in, damage to, or theft of or claims regarding the delivery or non-delivery of Your Products. You will handle such responsibilities, and agree to complete transactions for the items that you have listed in accordance with these Webstore Service Terms and applicable Program Policies. Notwithstanding anything in this Section W-3.1, for those of Your Products that are fulfilled using Fulfillment by Amazon (if any), the Fulfillment by Amazon Service Terms will apply to our storage, fulfillment and delivery of Your Products. All sales of Your Products on or through the Webstore Site will be final and may not be cancelled or revoked by you except pursuant to the applicable terms and conditions that appear on the Webstore Site.

W-3.2 Order and Payment Processing. We will process all payments, refunds and adjustments for Your Transactions. Amazon's, or one of its Affiliates', name will appear on the customer's credit card statement (which may also display, at our option, your name). We will determine the time at which we process payments, refunds and adjustments for Your Transactions in our sole discretion. However, you are always the seller of record. We may withhold for investigation, or refuse to process, any of Your Transactions. We do not need to accept any particular form of order or payment for Your Product, or honor or accept any discounts, coupons, gift certificates, or other offers or incentives made available by you. We may in our sole discretion withhold for investigation or to refuse to process any transaction involving Your Products or any other products or services on or through the Webstore Site. We may use the services of one or more third party, processors or financial institutions in connection with the Webstore Service (each, a "**Processor**"). If total Sales Proceeds from Your Transactions exceed \$20,000 per month for any three consecutive months, you agree to the additional terms and conditions between you and the Processor(s) as provided in the Credit Card Association Agreement. If you have entered into a separate agreement with one of our Affiliates that governs order and payment processing in connection with Your Transactions, you will be subject to the terms of that agreement notwithstanding anything to the contrary in this Agreement.

W-3.3 Fraud and Order Stops/Cancellations. We will bear the risk of credit card fraud (i.e., fraudulent purchases arising from the theft and unauthorized use of a third party's credit card information) occurring in connection with Your Transactions, except with respect to Your Transactions that you do not fulfill in accordance with the Order Information made available to you by us (including shipping Your Product only to the recipient and at the shipping address specified in the Order Information made available by Amazon), and you will bear all other risk of fraud or loss. You will promptly inform us of any changes to the product mix of Your Products or any pattern of fraudulent or other improper activities with respect to any of Your Product(s) that has resulted or may result in a higher incidence of fraud or other impropriety associated with transactions involving it (or them) than other similar products. You will stop or cancel orders of Your Products if we so direct (and if the customer has already been charged, you will execute the refunds for these orders) and will provide to

us telephone and email contact information for a designated contact available during business hours whom we can contact regarding fraud, order stops and cancellations and similar concerns, who will cooperate with us and who has access and ability promptly to cancel or stop orders from being shipped. We may restrict destinations to which you may ship Your Products sold on or through any Webstore Site.

W-3.4 Refunds and Returns. Except for those of Your Products, if any, that are fulfilled using Fulfillment by Amazon (in which case the Fulfillment by Amazon Service Terms will apply), you will accept and process returns of, and (using the functionality we make available to you) provide refunds and adjustments for, Your Products in accordance with these Webstore Service Terms and your policies posted on the Webstore Site at the time of the applicable sale, and you will calculate and refund any associated taxes required to be refunded. You will route all refund (and adjustment) payments through Amazon or its designated Affiliate. Amazon or its designated Affiliate will credit the applicable customer account, and you will reimburse Amazon for all amounts so credited. The functionality we make available to you for processing returns and adjustments may be modified or discontinued by us at any time without notice and is subject to the terms of this Agreement. Except for those of Your Products, if any, that are fulfilled using Fulfillment by Amazon (in which case the Fulfillment by Amazon Service Terms will apply), we have no obligation to accept any returns of any of Your Products.

W-3.5 Delivery Errors and Nonconformities; Product Recalls. You are responsible for any non-delivery, misdelivery, theft or other mistake or act in connection with the fulfillment of Your Products, except to the extent caused by (a) credit card fraud for which we are responsible under Section W-3.3; or (b) our failure to make available to you Order Information as it was received by us or resulting from address verification. Notwithstanding the previous sentence, for those of Your Products that are fulfilled using Fulfillment by Amazon (if any), the Fulfillment by Amazon Service Terms will apply to non-delivery, misdelivery, theft or other mistake or act in connection with the fulfillment of those of Your Products. You are also responsible for any non-conformity or defect in, or any public or private recall of, any of Your Products. You will notify us promptly as soon as you have knowledge of any public or private recalls of Your Products.

W-3.6 A-to-z Guarantee and Chargebacks. If we inform you that we have received a claim under the "A-to-z Guarantee" (or any substantially consistent offer), or any chargeback or other dispute, concerning one of Your Transactions, you will deliver to us within seven (7) days: (a) proof of delivery of the applicable Your Product(s); (b) the applicable Amazon order identification number; and (c) a description of the applicable Your Product(s). If you fail to comply with the prior sentence, or if the claim, chargeback, or dispute is not caused by (i) credit card fraud for which we are responsible under Section W-3.3, or (ii) our failure to make your Order Information available as the same was received by us or resulting from address verification, then you will promptly reimburse us for the amount of the customer purchase (including the Purchase Price, all associated shipping and handling charges and all taxes) and all associated credit card association, bank or other payment processing, re-presentment

and/or penalty fees associated with the original purchase and any chargeback or refund, in each case to the extent paid or payable by us or our Affiliates. We may require that you establish a separate reserve account (a "**Reserve**") to secure the performance of your payment obligations under this Agreement, in an amount as determined by us. Without limiting the foregoing, we may require a Reserve if you have a high rate of chargebacks, refunds, or other indicia of performance problems related to your use of the Webstore Service. The Reserve will be in an amount as determined by us to cover anticipated chargebacks or credit risk based on your processing history or such amount designated by our Processor(s) and the Reserves will be subject to the Transaction Processing Service Terms (if the Elected Country for a Service is the United States).

W-4 Customer Service.

W-4.1 General. The provisions in this Section W-4 apply only in connection with sales of Your Products through the Webstore Site that are not fulfilled using Fulfillment by Amazon. For customer service obligations pertaining to orders of Your Products using the Selling on Amazon Service or orders of Your Products fulfilled using Fulfillment by Amazon, the Service Terms applicable to those Services will apply. You will refer customer issues to us according to the responsibilities below, in a timely, professional and courteous manner and at the applicable "[Contact Us](#)" form, email address and/or phone number provided for such purpose by us. You will not establish direct phone or email transfer functionality of customer service contacts to us, forward customer emails to us, or disclose our customer service contact information unless in response to a customer contact concerning a customer service issue for which we are responsible under these Webstore Service Terms.

W-4.2 Our Customer Service Responsibilities. As between you and us, we will be solely responsible for all customer service issues relating to payment, credit card processing, debiting or crediting, and the "A-to-z Guarantee".

W-4.3 Your Customer Service Responsibilities. Unless provided otherwise elsewhere in these Webstore Service Terms, you will be solely responsible for all customer service issues relating to Your Products (including pricing, rebates, item information, availability, technical support, functionality and warranty), Your Product order fulfillment and shipping and handling, Your Product order cancellation by you or any customer, returns, refunds and adjustments, and feedback concerning experiences with your personnel, policies or processes. In performing customer service, you will always present yourself as a separate entity from us.

W-5 Data and Communications. We and you will co-own all the Customer Account Information and Webstore Transaction Information. Neither you nor we will need to pay any royalties or account to the other in connection with your or our use of any Customer Account Information or Webstore Transaction Information. You and your Affiliates will: (a) at all times comply with all Laws, including any Law related to the use of this type of information; and (b) comply with any applicable policies posted on the Webstore Site regarding use of this transaction and customer data. We are not liable for

protection or privacy of electronic mail or other information transferred through the Internet or any other network you or your customers may utilize, including without limitation in connection with the provision of the Webstore Service; or the back up of any of your files or data.

W-6 Pricing and Remittance.

W-6.1 Your Product Pricing and Terms of Sale Generally. You are free to determine the price for each of Your Products listed for sale on your Webstore Site.

W-6.2 Shipping & Handling Charges. You will determine shipping and handling charges for Your Products sold on or through the Webstore Site, but will comply with any shipping and handling charge Program Policies. If Your Product is fulfilled using Fulfillment by Amazon, this section will not apply and the Fulfillment by Amazon Service Terms will apply.

W-6.3 Remittance and Compensation.

W-6.3.1 Fees. You will pay us: (a) applicable Webstore Referral Fees; and (b) the applicable non-refundable Webstore Subscription Fee(s) in advance for each month of the term of this Agreement. "**Webstore Subscription Fee**" means the applicable fee(s) specified on the [Webstore Fee Schedule](#) at the time such fee is payable. With respect to each of Your Transactions: (i) "**Sales Proceeds**" has the meaning set out in the General Terms of this Agreement; and (ii) "**Webstore Referral Fee**" means the applicable percentage of Sales Proceeds from Your Transaction through the Webstore Site specified on the [Webstore Fee Schedule](#) at the time of Your Transaction.

W-6.3.2 Remittance of Sales Proceeds. We will remit to you on a bi-weekly (14-day) (or at our option, more frequent) basis any Webstore Sales Proceeds received by us but not previously remitted to you as of the date that is two (2) business days prior to the date of remittance (the "**Remittance Calculation Date**"), less: (a) the Webstore Referral Fees due for such sums; and (b) any Webstore Subscription Fees due. You will accept our remittances under the previous sentence as payment in full for the sale and shipping and handling of Your Products.

W-6.3.3 Refunds. If you refund money to a customer in connection with Your Transaction, and the refund is routed through us, we will refund to you the amount of the Webstore Referral Fee paid by you to us attributable to the amount of the customer refund (excluding any refunded taxes), less the lower of (a) five dollars (\$5); or (b) twenty percent (20%) of the Webstore Referral Fee, which we may retain as an administrative fee. We will remit any amounts to be refunded by us under this subsection from time to time together with the next remittance to be made by us to you pursuant to [subsection W-6.3.1](#) above.

W-7 Provision and Use of the Webstore Service.

W-7.1 License to the Webstore Service and Amazon Materials. Subject to this Agreement (including, but not limited to, [Section W-7.2](#) (License Restrictions) and [Section W-7.5](#) (Messaging)), we grant you a limited, revocable, non-sublicenseable, non-assignable, non-exclusive and royalty-free license to: (a) access and use the Webstore Service and the Amazon Materials in the manner permitted by this Agreement; (b) install, copy, and use any Amazon Materials we may provide, solely in conjunction with your access to and use and operation of your Webstore Site; (c) use the Amazon Marks solely in conjunction with your use and operation of your Webstore Site and solely in accordance with the [Trademark Usage Guidelines](#); and (d) enable the access to and use of your Webstore Site by customers.

W-7.2 License Restrictions. You may not and may not authorize any other party to do the following to or with the Webstore Service, the Webstore Site or the Amazon Materials: (a) reverse engineer, decompile, or disassemble them; (b) modify or create derivative works based upon them in whole or in part; (c) distribute copies of them; (d) remove any proprietary notices or labels on them; (e) use any Public Software in any manner that requires, pursuant to the license applicable to such Public Software, that the Webstore Service or any Amazon Materials be disclosed, licensed, distributed or otherwise made available to anyone; or (f) resell, lease, rent, transfer, sublicense, or otherwise transfer rights to them. In addition to any other rights or remedies that we may have, any use in violation of this section will immediately terminate your right to use the Webstore Service, the Webstore Site, the Amazon Materials, and the Amazon Marks.

W-7.3 Ownership; Reservation of Rights. You acknowledge and agree that we (or our licensors, as applicable) own all right, title and interest in and to the Webstore Service, the Amazon Materials, and Amazon Marks, and, except as explicitly included in this Agreement, you do not, by virtue of this Agreement or otherwise, acquire any ownership interest or rights in or to the Webstore Service, the Amazon Materials, any Amazon Marks, or any other intellectual property or technology that we provide or use in connection with the Webstore Service. All licenses not expressly granted in these Webstore Service Terms are reserved and no other licenses, immunity or rights, express or implied are granted by us, by implication, estoppels or otherwise.

W-7.4 URLs.

W-7.4.1 General. Except as provided in [Section W-7.4.2](#), you will be responsible for securing all rights to the URL(s) for the Webstore Site, including maintaining the registration for the URLs with your domain name registrars. You will comply with our requirements regarding the URL(s) and its administration with the registrar so that we can provide the Webstore Service to you. You represent and warrant that the URLs used in connection with the Webstore Site does not violate any intellectual property rights or any other proprietary rights of any person. Except in connection with any URL provided by us as described in [Section W-7.4.2](#), you will not include "amazon", or any other Amazon

Mark or any variation or similar misspelling in any URL used in connection with the Webstore Site, or otherwise.

W-7.4.2 Amazon Provided URL. We may provide you with a URL to use in connection with your Webstore Site. If you choose to use it you will comply with our requirements for its administration.

W-7.5 Messaging. We will have the right to determine the use of any Amazon Marks and any messaging or notice on the Webstore Site, for example, we will control how our role in processing orders and payments is explained to the customer, and (if applicable) how our "A-to-z Guarantee" is described. The Webstore Site will also display privacy and customer account use and creation messaging, which will include any terms we may require. At a minimum, you will ensure that your privacy policy discloses that you use third party service providers to provide your Webstore Site and that your third party service providers will have access to customer information. Should we allow or require you to include any Amazon Marks or messaging, you will do so strictly in accordance with instructions we provide to you.

W-8 Effect of Termination.

Upon any termination of the term of this Agreement or these Webstore Service Terms, all rights and obligations of the parties under these Webstore Service Terms will terminate, except that: the rights and obligations of the parties under Sections W-2, W-3, W-4, W-5, W-6 and W-8 with respect to Your Transactions occurring prior to termination will survive such termination. Upon any termination of the term of this Agreement or these Webstore Service Terms, you will immediately cease and discontinue all use of the Amazon Marks.

W-9 Miscellaneous.

Your Representations; Compliance with Laws. In addition to your representation and warranties in Section 5 of the General Terms of this Agreement, you represent and warrant to us that: (a) all of Your Products and their packaging comply and will comply with all applicable marking and labeling requirements required by law; (b) none of Your Products are or will be produced or manufactured, in whole or in part, by child labor or by convict or forced labor; (c) you and all of your subcontractors, agents and suppliers involved in producing or delivering Your Products will strictly adhere to all applicable Laws of the Elected Country, its territories and all other countries where Your Products are produced or delivered, regarding the operation of their facilities and their business and labor practices, including without limitation working conditions, wages, hours and minimum ages of workers; (d) you will not, unless we otherwise agree, redirect any customers or prospective customers from the Webstore Site to any other sales channel, and will not use the Webstore Service for any purpose other than the offer or sale of Your Products as contemplated in this Agreement; (e) Your Materials, Your Products and your offer and subsequent sale of any of the same complies with all applicable Laws (including all marking and labeling requirements) and do not contain any defamatory, obscene or

sexually explicit materials (except to the extent expressly permitted under applicable Program Policies); (f) you will ensure that Your Transactions are made at no less than fair value under the antidumping laws of the United States and will otherwise comply with the antidumping laws of the United States, its territories and of all other countries where Your Products are produced, delivered, or intended to be sold; (g) in connection with the Webstore Service or your Webstore Site, you will not separately ask for or require any customers or prospective customers to provide any credit card, debit card, bank account, or other information related to a payment method; and (h) you will not, without our prior consent, use any third party payment service for the processing of payments for transactions associated with your Webstore Site.

Webstore Definitions

"Amazon Functionality" means all techniques, know-how, features and functionality specific to development of a website presence to display products loaded into the Amazon platform, including the following features and functions: search, browse, product detail display, shopping cart and credit card transaction processing, order/account lookup, and storefront administration & merchandising.

"Amazon Mark" is defined in the [Trademark Usage Guidelines](#).

"Amazon Materials" means: (a) the Amazon Functionality (including, without limitation, all related techniques, know-how, algorithms, materials, specifications and source code); and (b) all Webstore Service-related product information, APIs, and any distinctive trade dress and trade styles (including, without limitation, color schemes), proprietary fonts, and the design, formatting, organization and structure of screens and other elements included within the Webstore Site.

"Amazon Product" means any products that are sold and fulfilled by Amazon (or one of its Affiliates) on its own behalf.

"Amazon Transaction" means the sale of any Amazon Product through the Webstore Site for which Amazon (or its Affiliate) receives Amazon Transaction Revenues.

"Amazon Transaction Revenues" means: (a) the aggregate revenues (excluding taxes, bad debt, gift-wrapping charges, shipping and handling charges, or services charges and credit card processing fees) derived by Amazon and its Affiliates from sales of Amazon Products through the Webstore Site as provided in this Agreement; less (b) any revenues attributable to returned Amazon Products, if such revenues previously were included in "Amazon Transaction Revenues".

"Customer Account Information" means the following non-transaction-specific information you receive from Amazon prior to the expiration or termination of this Agreement with respect to customer accounts created or otherwise used to purchase Your Products on the Webstore Site: customer name, physical address, e-mail address and phone numbers. Notwithstanding the foregoing and for the avoidance of doubt, Customer Account Information does not include: (a) any Webstore Transaction

Information; (b) any credit card, other account or identifying number of, or any other information specifically concerning, any payment instrument or method; (c) sign-in credentials; (d) information that pertains specifically to functionality of the Webstore Site (e.g., personalization settings); or (e) user clickstream information.

"Public Software" means any software, documentation or other material that contains, or is derived (in whole or in part) from, any software, documentation or other material that is distributed as free software, open source software (e.g., Linux) or similar licensing or distribution models, including, but not limited to software, documentation or other material licensed or distributed under any of the following licenses or distribution models, or licenses or distribution models similar to any of the following: (a) the GNU General Public License (GPL); Lesser/Library GPL (LGPL), or Free Documentation License; (b) The Artistic License (e.g., PERL); (c) the Mozilla Public License; (d) the Netscape Public License; (e) the Sun Community Source License (SCSL); (f) the Sun Industry Standards License (SISL); (g) the BSD License; and (h) the Apache License.

"Shipment Information" means, with respect to any of Your Products, the estimated or promised shipment and/or delivery date.

"Webstore Required Product Information" means with respect to each of Your Products, the following: (a) a description of Your Product; (b) the UPC code (unless we otherwise agree), SKU number for Your Product, and any other identifying information about Your Product that we request; (c) information regarding the in-stock status, shipping availability period or shipping availability date, and Your shipping limitations or requirements (in each case, in accordance with any categorizations we prescribe from time to time); (d) the categorization of Your Product within each applicable Amazon browse structure that we prescribe from time to time; (e) a digitized image of Your Product (provided that you will first remove any logos, text or other marking included on such image except to the extent that such logos, text or other marking actually appear on Your Product); (f) the price for Your Product; (g) any text, disclaimers, warnings, notices, labels or other content required by applicable law to be displayed in connection with the offer, merchandising, advertising or sale of Your Product; (h) any vendor requirements, restocking fees or other terms and conditions applicable to such product that a customer should be aware of prior to purchasing the product; (i) brand; (j) model; (k) product dimensions; (l) weight; (m) a delimited list of technical specifications; (n) UPC code and SKU number (and other identifying information as Amazon may reasonably request) for accessories related to Your Product that are available in Amazon's catalog; and (o) any other information we reasonably request (e.g., the condition of used or refurbished products).

"Webstore Transaction Information" means the following information you receive from Amazon associated with any orders of Your Product through your Webstore Site: total transaction amount; order ID#; order item code; SKU; product name; quantity; price; and adjustments. Notwithstanding the foregoing and for the avoidance of doubt, Webstore Transaction Information does not include: (a) any Customer Account Information; (b) sign-in credentials; (c) user click-stream information; or (d)

any credit card or other account or identifying number of, or any other information specifically concerning, any payment instrument or method.

Fulfillment by Amazon Service Terms

Fulfillment by Amazon ("**FBA**") provides fulfillment and associated services for Your Products.

These FBA Service Terms are part of the Agreement, and, unless specifically provided otherwise, concern and apply only to your participation in FBA. BY REGISTERING FOR OR USING FBA, YOU (ON BEHALF OF YOURSELF OR THE BUSINESS YOU REPRESENT) AGREE TO BE BOUND BY THE AGREEMENT, INCLUDING THESE FBA SERVICE TERMS. You expressly agree that Amazon may engage its Affiliate(s) or a third party in order to complete one or more of the fulfillment and associated services outlined below.

If the Elected Country is Japan, the following applies to you: Notwithstanding anything to the contrary in the Agreement, if there should be any subject matter specified in the "Standard Storage Ballment Terms and Conditions (Hyoujun Soko Kitaku Yakkan – Otsu)" that is not specified in the Agreement, including these FBA Service Terms, upon your request, such provision will be determined by discussion and mutual agreement of the parties.

Fulfillment Services

F-1 Your Products

Once you are accepted into FBA, you must apply to register each product you offer that you wish to include in the FBA program. We may refuse registration in FBA of any product, including on the basis that it is an FBA Excluded Product or that it violates applicable Program Policies. You may at any time withdraw registration of any of Your Products from FBA.

F-2 Product and Shipping Information

You will, in accordance with applicable Program Policies, provide in the format we require accurate and complete information about Your Products registered in FBA, and will provide Fulfillment Requests for any Units fulfilled using FBA that are not sold through an Amazon Site ("**Multi-Channel Fulfillment Units**"). You will promptly update any information about Your Products in accordance with our requirements and as necessary so that the information is at all times accurate and complete.

F-3 Shipping to Amazon

F-3.1 Except as otherwise provided in [Section F-3.4](#) and [Section F-5](#), FBA is limited to Units that are shipped to and from fulfillment centers located within the applicable Elected Country, to be delivered to customers in the same Elected Country only. You will ship Units to us in accordance with applicable Program Policies. You will be responsible for all costs incurred to ship the Units to the shipping destination (including costs of freight and transit insurance) and Amazon will not pay any shipping costs except as provided in [Section F-3.2](#). You are responsible for payment of all customs, duties,

taxes and other charges. In the case of any improperly packaged or labeled Unit, we may return the Unit to you at your expense (pursuant to [Section F-7](#)) or re-package or re-label the Unit and charge you an administrative fee.

F-3.2 You will not deliver to us, and we may refuse to accept, any shipment or Unsuitable Unit. We may return or dispose of any Unsuitable Unit as provided in [Section F-7](#) (and you will be deemed to have consented to such action): (a) immediately if we determine in our sole discretion that the Unit creates a safety, health or liability risk to Amazon, our personnel or any third party; (b) if you fail to direct us to return or dispose of any Unsuitable Unit within thirty (30) days after we notify you that the Unit has been recalled; or (c) except as otherwise provided in this [Section F-3.2](#), if you fail to direct us to return or dispose of any Unsuitable Unit within ninety (90) days after we notify you that we are in possession of it. In addition, you will reimburse us for any expenses we incur in connection with any Unsuitable Units.

F-3.3 If the Elected Country is the United States or Mexico, we may, at our option, allow you to ship Units at your expense (as described in [Section F-9.2](#)) to fulfillment centers using discounted shipping rates that we may make available to you for certain carriers. In such event, you will use the processes and supply the information that we require for you to obtain such discounted rates. You also must comply with standard operating procedures, weight and size restrictions, and other shipping requirements of the applicable carriers. If we provide you with the estimated shipping costs prior to shipment, you acknowledge and agree that actual shipping costs may vary from such estimates. In addition, if the weight of the Unit, as determined by the applicable carrier, differs from that submitted by you to us for purposes of determining the estimated shipping costs, then: (a) you may be charged more than the estimated shipping costs if the carrier determines that such Unit weighs more than as submitted by you; or (b) you may be charged the full amount of the estimated shipping costs even if the carrier determines the weight to be less than that submitted by you. You will not use our carrier account information (e.g., carrier account number, amount of shipping rates, etc.) for any purpose, nor disclose such information to any third party, and you will protect such information as Amazon's confidential information in accordance with Section 11 of the General Terms of this Agreement. As between you, us and our carrier, you will be the shipper of record, and we will be the payer of record with respect to all Units shipped to us using such discounted rates. Title and risk of loss for any Unit shipped using discounted rates provided by us under this Section will remain with you, and our provision of such shipping rates will not create any liability or responsibility for us with respect to any delay, damage or loss incurred during shipment. You authorize the applicable carrier to provide us with all shipment tracking information.

F-3.4 If you ship Units from outside the applicable Elected Country to fulfillment centers, you will list yourself as the importer/consignee and nominate a customs broker. If Amazon is listed on any import documentation, Amazon reserves the right to refuse to accept the Units covered by the import documents and any costs assessed against or incurred by Amazon will be collected from Your Bank Account, deducted from amounts payable to you, or by other method at our election.

F-4 Storage

We will provide storage services as described in these FBA Service Terms once we confirm receipt of delivery. We will keep electronic records that track inventory of Units by identifying the number of Units stored in any fulfillment center. We will not be required to physically mark or segregate Units from other inventory units (e.g., products with the same Amazon standard identification number) owned by us, our Affiliates or third parties in the applicable fulfillment center(s). If we elect to commingle Units with such other inventory units, both parties agree that our records will be sufficient to identify which products are Units. We may move Units among facilities. If there is a loss of or damage to any Units while they are being stored, we will, as your sole remedy, reimburse you in accordance with the [FBA Guidelines](#), and you will, at our request, provide us a valid tax invoice for the compensation paid to you. If we reimburse you for a Unit, we will be entitled to dispose of the Unit pursuant to [Section F-7](#). This reimbursement is our total liability for any duties or obligations that we or our agents or representatives may have as a bailee or warehouseman, and your only right or remedy that you may have as a bailor. At all other times, you will be solely responsible for any loss of, or damage to, any Units. Our confirmed receipt of delivery does not: (a) indicate or imply that any Unit has been delivered free of loss or damage, or that any loss or damage to any Unit later discovered occurred after confirmed receipt of delivery; (b) indicate or imply that we actually received the number of Units of Your Product(s) specified by you for such shipment; or (c) waive, limit or reduce any of our rights under this Agreement. We reserve the right to impose, and change from time to time, scheduling restrictions and volume limitations on the delivery and storage of your inventory in fulfillment centers, and you will comply with any of these restrictions or limitations.

F-5 Fulfillment

As part of our fulfillment services, we will ship Units from our inventory of Your Products to the shipping addresses in the Elected Country included in valid customer orders, or submitted by you as part of a Fulfillment Request. We may ship Units together with products purchased from other merchants, including any of our Affiliates. We also may ship Units separately that are included in a single Fulfillment Request. If you elect to participate in our export fulfillment services, we will also ship Your Products that we determine to be eligible (each, a **"Foreign-Eligible Product"**) to Foreign Addresses within countries we determine to be eligible for foreign shipments, subject to the additional terms on foreign shipments in the applicable [FBA Guidelines](#).

F-6 Customer Returns

F-6.1 You will be responsible for and will accept and process returns of, and provide refunds and adjustments for, any Multi-Channel Fulfillment Units in accordance with the Agreement (including the applicable Program Policies).

F-6.2 We will receive and process returns of any Amazon Fulfillment Units that were shipped to addresses within the Elected Country in accordance with the terms of your Seller Agreement, these FBA Service Terms and the Program Policies. Any Sellable Units that are also Amazon Fulfillment Units and that are properly returned will be placed back into the inventory of Your Products in the FBA Program. We may fulfill customer orders for Your Products with any returned Amazon Fulfillment Units. Except as provided in Section F-7, you will retake title of all Units that are returned by customers.

F-6.3 Except as provided in Section F-5, we will, at your direction, either return or dispose of any Selling on Amazon Unit that is returned to us and that we determine is an Unsuitable Unit as provided in Section F-7. Without limitation of our rights under Section F-7.1, we may elect to return or dispose of that Unsuitable Unit as provided in Section F-7, and you will be deemed to have consented to our election if you fail to direct us to return or dispose of the Unsuitable Unit within ninety (90) days after we notify you of the Unsuitable Unit.

F-6.4 If Amazon receives a customer return of a Multi-Channel Fulfillment Unit, you will direct us to return or dispose of the Unit at your own cost failing which we may dispose of the Unit as provided in Section F-7.

F-7 Returns to You and Disposal

F-7.1 You may, at any time, request that Units be returned to you. We may return Units to you for any reason, including upon termination of these FBA Service Terms. These returned shipments will be sent to your designated shipping address that is within the Elected Country (or, at Amazon's sole discretion, your designated shipping address). If the address we have for you is outdated, incorrect or outside the Elected Country, or if we cannot make arrangements for you to pay for the return shipment, the Unit(s) will be deemed abandoned and we may elect to dispose of the Unit(s) as provided in this Agreement.

F-7.2 You may, at any time, request that we dispose of Units. We may dispose of any Unit we are entitled to dispose of in the manner we prefer. Title to each disposed Unit will transfer to us at no cost to us as necessary for us to dispose of the Unit, and we will retain all proceeds, if any, received from the disposal of any Unit.

F-7.3 You will promptly notify us of any recalls or threatened recalls of any of Your Products and cooperate and assist us in connection with any recalls, including by initiating the procedures for returning items to you under our standard processes. You will be responsible for all costs and expenses you, we or any of our or your Affiliates incur in connection with any recall or threatened recall of any of Your Products (including the costs to return, store, repair, liquidate or deliver to you or any vendor any of these products).

F-8 Customer Service

F-8.1 For Multi-Channel Fulfillment Units we will have no customer service obligations other than to pass any inquiries to your attention at the contact you provide, and to make available a reasonable amount of information regarding the status of the fulfillment of Your Products if you request it and if and to the extent we possess the requested information. You will ensure that all of your policies and messaging to your customers regarding shipping of Your Products and other fulfillment-related matters, reflect our policies and requirements, including with regard to shipping methods, returns and customer service; and, you will conspicuously display on your website(s), in emails or in other media or communications any specific disclosures, messaging, notices, and policies we require.

F-8.2 We will be responsible for and have sole discretion regarding all customer service issues relating to packaging, handling and shipment and customer returns, refunds and adjustments related to Amazon Fulfillment Units. We will have the right to determine whether a customer will receive a refund, adjustment or replacement for any Amazon Fulfillment Unit and to require you to reimburse us where we determine you have responsibility in accordance with the Agreement (including these FBA Service Terms and the Program Policies). Except as provided in this [Section F-8](#) regarding any Amazon Fulfillment Units, customer service will be handled in accordance with your Seller Agreement.

F-8.3 In situations relating to Amazon Fulfillment Units where the wrong item was delivered or the item was damaged or lost or is missing, unless we determine that the basis for such request is caused by you or any of your employees, agents or contractors, we will, as your sole and exclusive remedy and at our option: (a) for any Amazon Fulfillment Unit, (i) ship a replacement Unit to the customer and reimburse you in accordance with the [FBA Guidelines](#) for the replacement Unit, or (ii) process a refund to the customer and reimburse you in accordance with the [FBA Guidelines](#) for the Unit; or (b) for any Multi-Channel Fulfillment Unit, reimburse you in accordance with the [FBA Guidelines](#) for the Unit (and you will, at our request, provide us a valid tax invoice for the compensation paid to you). Any customer refund will be processed in accordance with the Selling on Amazon and the Transaction Processing Service Terms (if the Elected Country for a Service is the United States). Notwithstanding the Selling on Amazon Service Terms, we will be entitled to retain the applicable fees payable to us under the Selling on Amazon Service Terms and these FBA Service Terms, respectively. Except as expressly provided in this [Section F-8.3](#), you will be responsible for all costs associated with any replacement or return.

F-8.4 If we provide a replacement Unit or refund as described in [Section F-8.3](#) to a customer and that customer returns the original Unit to us, we will be entitled to dispose of the Unit pursuant to [Section F-7](#), or, if it is a Sellable Unit, we may, at our option, place such Unit back into your inventory in accordance with [Section F-6](#). If we do put a Unit back into your inventory, you will reimburse us for the applicable Replacement Value (as described in the [FBA Guidelines](#)) of the returned Unit. Any replacement Unit shipped by us under these FBA Service Terms will be deemed to be, and will be treated in the same manner as, an order and sale of such Unit from you to the customer via the

applicable Amazon Site or Service in accordance with, and subject to, the terms and conditions of this Agreement and your Seller Agreement.

F-9 Compensation for Fulfillment Services

F-9.1 Handling and Storage Fees. You will pay us the applicable fees described in the applicable Fulfillment by Amazon Fee Schedule. You will be charged the Storage Fees beginning on the day (up to midnight) that the Unit arrives at a fulfillment center and is available for fulfillment by Amazon (or in the case of any Unsuitable Unit, the arrival day (up to midnight)), until the earlier of: (a) the day (up to midnight) we receive a valid customer order for such product or a request from you to return or dispose of the Unit; or (b) the day (up to midnight) we actually ship the Unit to your designated return location or dispose of the Unit.

F-9.2 Shipping and Gift Wrap. For any Amazon Fulfillment Units we will determine the amounts charged to the customer for shipping and gift wrap services for the Units that we fulfill through the FBA Program. As between you and us, these charges will be your charges to the customer, and we will report them to you. We will charge you (and you will pay us) a fee equal to the amount of such charges to the customer. In the case of shipments of Units sold through the Amazon Site that qualify for the "Free Shipping" promotion, the amounts charged to the customer for shipping the Selling on Amazon Units that Amazon fulfills will first be charged to the customer and will next be deducted from the total charges to the customer as your promotion and Amazon will not charge you the fee described above. If the Elected Country is the United States and you ship Units to us using the shipping rates that we may make available pursuant to Section F-3.3, you will reimburse us for the actual amounts charged to us by the applicable carrier for such shipments.

F-9.3 Proceeds. We may keep all proceeds of any Units that we dispose of or to which title transfers, including returned, damaged or abandoned Units. You will have no security interest, lien or other claim to the proceeds that we receive in connection with the sale, fulfillment and/or shipment of these Units.

F-10 Indemnity

In addition to your obligations under Section 6 of the General Terms of this Agreement, you also agree to indemnify, defend and hold harmless us, our Affiliates, and our and their respective officers, directors, employees, representatives and agents against any Claim that arises from or relates to: (a) the Units (whether or not title has transferred to us, and including any Unit that we identify as yours pursuant to Section F-4 regardless of whether such Unit is the actual item you originally sent to us), including any personal injury, death or property damage; (b) the shipment, export or delivery of Your Products to Foreign Addresses (including with respect to any classification data and other information provided by you to us in connection therewith, and notwithstanding any rights we have under Section F-5 or any certifications we may make in connection with the shipment, export or delivery of Your

Products); (c) any of Your Taxes or the collection, payment or failure to collect or pay Your Taxes; and, if applicable (d) any sales, use, value added, personal property, gross receipts, excise, franchise, business or other taxes or fees, or any customs, duties or similar assessments (including penalties, fines or interest on any of the foregoing) imposed by any government or other taxing authority in connection with the shipment of Foreign-Eligible Products to Foreign Addresses (collectively, **"Foreign Shipment Taxes"**);

F-11 Release

You, on behalf of yourself and any successors, subsidiaries, Affiliates, officers, directors, shareholders, employees, assigns and any other person or entity claiming by, through, under or in concert with them (collectively, the **"Releasing Parties"**), irrevocably acknowledge full and complete satisfaction of and unconditionally and irrevocably release and forever fully discharge Amazon and each of our Affiliates, and any and all of our and their predecessors, successors, and Affiliates, past and present, as well as each of our and their partners, officers, directors, shareholders, agents, employees, representatives, attorneys, and assigns, past and present, and each of them and all Persons acting by, through, under or in concert with any of them (collectively, the **"Released Parties"**), from any and all claims, obligations, demands, causes of action, suits, damages, losses, debts or rights of any kind or nature, whether known or unknown, suspected or unsuspected, absolute or contingent, accrued or unaccrued, determined or speculative (collectively, **"Losses"**) which the Releasing Parties now own or hold or at any time have owned or held or in the future may hold or own against the Released Parties, or any of them, arising out of, resulting from, or in any way related to the shipment, export or delivery of Your Products to Foreign Addresses, including any tax registration or collection obligations. You, on behalf of yourself and all other Releasing Parties, recognize that you, and each of them, may have some Losses, WHETHER IN TORT, PRODUCT LIABILITY, CONTRACT, WARRANTY OR OTHERWISE, against the Released Parties of which you, or any of them, are totally unaware and unsuspecting, or which may arise or accrue after the date you register for or use FBA, which the Releasing Parties are giving up by agreeing to these FBA Service Terms. It is your intention in agreeing to these FBA Service Terms that these FBA Service Terms will deprive the Releasing Parties of each and all such Losses and prevent the Releasing Party from asserting any such Losses against the Released Parties, or any of them. In addition to the foregoing, you acknowledge, on behalf of yourself and all other Releasing Parties that you are familiar with Section 1542 of the Civil Code of the State of California, as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

You, on behalf of yourself and all other Releasing Parties, expressly waive and relinquish any rights that you had or may have under Section 1542 of the Civil Code of the State of California or any similar

provision of the law of any other jurisdiction, to the full extent that you may lawfully waive all such rights pertaining to the subject matter of these FBA Service Terms.

F-12 Disclaimer

IN ADDITION TO THE DISCLAIMER IN SECTION 7 OF THE GENERAL TERMS OF THIS AGREEMENT, WE DISCLAIM ANY DUTIES OF A BAILEE OR WAREHOUSEMAN, AND YOU WAIVE ALL RIGHTS AND REMEDIES OF A BAILOR (WHETHER ARISING UNDER COMMON LAW OR STATUTE OR OTHERWISE), RELATED TO OR ARISING OUT OF ANY POSSESSION, STORAGE OR SHIPMENT OF YOUR PRODUCTS BY US OR OUR AFFILIATES OR ANY OF OUR OR THEIR CONTRACTORS OR AGENTS.

F-13 Effect of Termination

Following any termination of the Agreement or these FBA Service Terms in connection with a particular Elected Country, we will, as directed by you, return to you or dispose of the Units held in that Elected Country as provided in Section F-7. If you fail to direct us to return or dispose of the Units within ninety (90) days after termination, then we may elect to return and/or dispose of the Units in whole or in part, as provided in Section F-7, and you will be deemed to have consented to this. Upon any termination of these FBA Service Terms in connection with a particular Elected Country, all rights and obligations of the parties under these FBA Service Terms in connection with such Elected Country will be extinguished, except that the rights and obligations of the parties under Sections F-1, F-2, F-3, F-4, F-5, F-6, F-7, F-8, F-9, F-11, F-12 and F-13 with respect to Units received or stored by Amazon as of the date of termination will survive the termination.

F-14 Tax Matters

You understand and acknowledge that storing Units at fulfillment centers may create tax nexus for you in any country, state, province, or other localities in which your Units are stored, and you will be solely responsible for any taxes owed as a result of such storage. If any Foreign Shipment Taxes or Your Taxes are assessed against us as a result of performing services for you in connection with the FBA Program or otherwise pursuant to these FBA Service Terms, you will be responsible for such Foreign Shipment Taxes and Your Taxes and you will indemnify and hold Amazon harmless from such Foreign Shipment Taxes and Your Taxes as provided in Section F-10 of these FBA Service Terms.

F-15 Additional Representation

In addition to your representations and warranties in Section 5 of the General Terms of this Agreement, you represent and warrant to us that: (a) you have valid legal title to all Units and all necessary rights to distribute the Units and to perform under these FBA Service Terms; (b) you will deliver all Units to us in new condition (or in such condition otherwise described by you in the applicable Your Product listing) and in a merchantable condition; (c) all Units and their packaging will comply with all applicable marking, labeling and other requirements required by Law; (d) no Unit is or

will be produced or manufactured, in whole or in part, by child labor or by convict or forced labor; (e) you and all of your subcontractors, agents and suppliers involved in producing or delivering Units will strictly adhere to all applicable Laws of the Elected Country, its territories and all other countries where Units are produced or delivered, regarding the operation of their facilities and their business and labor practices, including working conditions, wages, hours and minimum ages of workers; and (f) that all Foreign-Eligible Products (i) can be lawfully exported from Canada, Mexico, Japan, or the United States, as applicable, without any license or other authorization; and (ii) can be lawfully imported into, and comply with all applicable Laws of, any eligible country.

FBA Definitions

"Amazon Fulfillment Units" means Units fulfilled using FBA that are sold through an Amazon Site. For avoidance of doubt, if you have successfully registered for or used both the FBA and Selling on Amazon Services, then the term "Amazon Fulfillment Units" and the defined term "Amazon Fulfilled Products" in the Selling on Amazon Service Terms both refer to the same items.

"FBA Excluded Product" means any Unit that is an Excluded Product, or is otherwise prohibited by the applicable Program Policies.

"Foreign Address" means (a) if the Elected Country is the United States, any mailing address that is not (i) within the fifty states of the United States or Puerto Rico, or (ii) an APO/FPO address; and (b) if the Elected Country is not the United States, any mailing address that is not within the Elected Country.

"Fulfillment Request" means a request that you submit to us (in accordance with the standard methods for submission prescribed by us) to fulfill one or more Multi-Channel Fulfillment Units.

"Multi-Channel Fulfillment Units" has the meaning in Section F-2.

"Sellable Unit" means a Unit that is not an Unsuitable Unit.

"Seller Agreement" means the Selling on Amazon Service Terms, the Merchants@ Program Agreement, the Marketplace Participation Agreement, any successor to any of these agreements, or any other similar agreement (as determined by Amazon) between you and us that permits you to offer products and services via a particular Amazon Site.

"Shipping Information" means with respect to any purchased Unit(s), the following information: the name of the recipient, the shipping address, the quantity of Units to be shipped, and any other shipping-related information we may reasonably request.

"Unit" means a unit of Your Product that you deliver to Amazon in connection with the FBA Program.

"Unsuitable Unit" means a Unit: (a) that is defective, damaged, or lacking required label(s); (b) the labels for which were not properly registered with Amazon before shipment or do not match the product that was registered; (c) that is an FBA Excluded Product or does not comply with the Agreement (including applicable Program Policies); (d) that Amazon determines is unsellable or unfulfillable; or (e) that Amazon determines is otherwise unsuitable.

Amazon Clicks Service Terms

Amazon Clicks, including Amazon Product Ads, Amazon Sponsored Products and Amazon Text Ads (together "**Amazon Clicks**"), is a Service that allows you to advertise Your Products on Amazon Network Properties.

These Amazon Clicks Service Terms are part of the Agreement, and, unless specifically provided otherwise, concern and apply only to your participation in Amazon Clicks. BY REGISTERING FOR OR USING AMAZON CLICKS, YOU (ON BEHALF OF YOURSELF OR THE BUSINESS YOU REPRESENT) AGREE TO BE BOUND BY THE AGREEMENT, INCLUDING THESE AMAZON CLICKS SERVICE TERMS.

C-1 Amazon Clicks

Your Ads may be displayed or made available on Amazon Network Properties as we determine. We do not guarantee that Your Ads will be displayed or made available on any Amazon Network Property, or that Your Ads will appear in any particular position or rank. Notwithstanding any other provision of the Agreement, we may in our sole discretion restrict, modify or otherwise determine the content, appearance, design, functionality and all other aspects of Your Ads, and we may remove any of Your Ads without notice. Except to the extent expressly stated in the Agreement, you are solely responsible for all obligations, risks and other aspects pertaining to the sale of any products referred to in Your Ads, including order processing, order fulfillment, returns, refunds, recalls, misdelivery, theft, customer service, and collection of taxes. In addition, you are solely responsible for all ad content, URLs and any other information you submit to us in connection with Your Ads, and the websites and/or other properties to which Your Ads direct users (other than the Amazon Site).

We may use mechanisms that rate, or allow users to rate, Your Products and/or your performance, and we may make these ratings and feedback publicly available. We may use any means we determine necessary to review and monitor Your Ads to improve our service and ad quality.

C-2 Product Information

You will, in accordance with applicable Program Policies, provide, in the format we require, accurate and complete information for each of Your Ads. You will update this information as necessary to ensure that it is at all times accurate and complete. You will not provide any information for, or otherwise seek to advertise for sale on any Amazon Network Property, any products that are unlawful or are otherwise prohibited by applicable Program Policies.

C-3 Amazon Clicks Requirements

Using the highest industry standards, you will treat users and customers who link to your products via any of Your Ads with courtesy and respect during all stages of the buying process and resolve to our and their satisfaction in a timely and professional manner any related customer service matters we or

they bring to your attention. You will ensure that Your Materials and your advertisement, offer, sale and fulfillment of Your Products comply with all applicable Laws and Program Policies. You will not, directly or indirectly, engage in any fraudulent, impermissible, inappropriate or unlawful activities in connection with your participation in Amazon Clicks, including: (a) sending multiple listings of identical products in the same feed or sending multiple feeds under different accounts; (b) generating fraudulent, repetitive or otherwise invalid clicks, impressions, queries or other interactions, whether through the use of automated applications or otherwise; (c) collecting any user information from any Amazon Network Property or retrieving, extracting, indexing or caching any portion of any Amazon website or services or the websites or services of our Affiliates, whether through the use of automated applications or otherwise; (d) targeting communications of any kind on the basis of the intended recipient being a user of any Amazon Network Property; (e) interfering with the proper working of any Amazon Network Property, Amazon Clicks or our systems; or (f) attempting to bypass any mechanism we use to detect or prevent any of the activities described in this paragraph.

C-4 Payment and Tax Matters

You will pay us the applicable fee per Click. The per Click fee will be determined solely by Amazon based on the amount you bid for each of Your Ads, consistent with any applicable product category minimums and Program Policies. You agree to pay us the applicable fees we calculate for your use of the Amazon Clicks Service in the applicable Local Currency only. In addition to any other means permitted by the Agreement, we may collect the applicable fees: (a) in accordance with the payment ladder described in the Program Policies; and (b) on a recurring monthly basis for any remaining unpaid fees accrued after the last ladder payment charged each month. If we choose to invoice you for amounts due to us under the Agreement, you will pay the invoiced amounts within 30 days of the date of the applicable invoice. We may require payment of interest at the rate of 1.5% per month or the highest legally permissible rate, whichever is lower, on all amounts not paid when due until paid in full. You will reimburse us for all fees incurred in connection with our collection of amounts payable and past due. You waive all claims related to the fees we charge (including fees based on suspected invalid Clicks or invalid Impressions of Your Ads), unless claimed within 60 days after the date charged. You understand third parties may generate Impressions or Clicks on Your Ads for improper purposes and you accept this risk. Your sole and exclusive remedy for any suspected invalid Impressions or Clicks is to request advertising credits within the timeframe set out above.

C-5 Effect of Termination

Upon any termination of the term of the Agreement or these Amazon Clicks Service Terms, all rights and obligations of the parties under these Amazon Clicks Service Terms will terminate, except that Sections C-1, C-2, C-4, C-5, C-6 and C-7 will survive termination.

C-6 Agents

If you are an Agent: (a) you represent and warrant that you have been appointed as an agent of a Amazon Clicks Participant, that you are duly authorized to enter into this Agreement on behalf of the Amazon Clicks Participant and have full power and authority to bind the Amazon Clicks Participant to this Agreement, and that the Agreement including these Amazon Clicks Service Terms will be enforceable against the Amazon Clicks Participant in accordance with its terms; (b) you will, upon our request, provide us written confirmation of the agency relationship between you and the Amazon Clicks Participant, including, for example, the Amazon Clicks Participant's express acknowledgment that you are its Agent and are authorized to act on its behalf in connection with Amazon Clicks; (c) except as set forth in the Agreement, you will not make any representation, warranty, promise or guarantee about Amazon Clicks, us or your relationship with us; (d) you will perform your duties pursuant to the Agreement including these Amazon Clicks Service Terms in a professional manner consistent with any requirements we may establish; (e) you will not at any time use information received in connection with Amazon Clicks to conduct any marketing efforts targeted at our existing advertisers or Amazon Clicks Participants; and (f) you and the Amazon Clicks Participant are each responsible for all payment obligations under these Amazon Clicks Service Terms, and you and the Amazon Clicks Participant each waive any rights that might require us to proceed against one or more of you prior to proceeding against the other.

C-7 Miscellaneous

C-7.1 Representations

In addition to your representations and warranties in Section 5 of the Agreement, you represent and warrant to us that: (a) on any website to which Your Ads link (other than on the Amazon Site), you will at all times post and comply with a privacy policy that complies with all applicable Laws; and (b) Your Materials and any information displayed on your website or on any website to which Your Ads link (for the Amazon Site, only to the extent such information is based on Your Materials) comply with all applicable Laws (including all marking and labelling requirements) and do not contain any false, misleading, infringing, defamatory, obscene or sexually explicit materials (except to the extent expressly permitted under applicable Program Policies).

C-7.2 Indemnification

In addition to your obligations under Section 6 of the Agreement, you agree to indemnify, defend and hold harmless us, our Affiliates, and our and their respective officers, directors, employees, representatives and agents against any Claim arising from or related to: (a) your participation in Amazon Clicks, including the display of any of Your Ads, any website, Content, data, materials or other items or information to which Your Ads link, and any actual or alleged infringement of any Intellectual

Property Rights by any of the foregoing; and (b) if you are an Agent, any breach or alleged breach of your representations and warranties set forth in these Amazon Clicks Service Terms.

C-7.3 Disclaimers

IN ADDITION TO THE DISCLAIMERS IN SECTION 7 OF THE AGREEMENT, WE AND OUR AFFILIATES DISCLAIM AND YOU WAIVE ALL CLAIMS REGARDING ANY GUARANTEES ABOUT TIMING, POSITIONING, ADJACENCY, PERFORMANCE, QUANTITY OR QUALITY OF (AS APPLICABLE): PLACEMENTS, TARGETING, IMPRESSIONS, CLICKS, CLICK RATES, CONVERSION RATES, AUDIENCE SIZE, DEMOGRAPHICS OR ADVERTISING COSTS.

Amazon Clicks Definitions

"Agent" means an advertising agency or other person or entity who represents an Amazon Clicks Participant.

"Amazon Clicks Participant" means any person or entity enrolled in Amazon Clicks by you if you are the Agent of that person or entity.

"Amazon Network Properties" means: (a) the Amazon Site; (b) any website, device, service, feature or other online point of presence operated by Amazon or any of our Affiliates; and (c) any Amazon Associated Properties.

"Click" means each time a user clicks on any of Your Ads as determined solely by Amazon.

"Your Ads" means any advertisement for Your Product based upon Your Materials that is displayed through Amazon Clicks.

Transaction Processing Service Terms

BY REGISTERING FOR OR USING ANY SERVICE OTHER THAN AMAZON CLICKS FOR WHICH THE ELECTED COUNTRY IS THE UNITED STATES, YOU (ON BEHALF OF YOURSELF OR THE BUSINESS YOU REPRESENT) AGREE TO BE BOUND BY THESE TRANSACTION PROCESSING SERVICE TERMS FOR THAT SERVICE. **NOTWITHSTANDING THE FOREGOING, IF A SEPARATE AGREEMENT GOVERNS THE OFFER, SALE OR FULFILLMENT OF YOUR PRODUCTS ON THE US AMAZON SITE, THE TERMS OF THAT AGREEMENT WILL CONTINUE TO GOVERN THE PROCESSING OF YOUR TRANSACTIONS TO THE EXTENT DESCRIBED IN THAT AGREEMENT.**

P-1 Payments Processing Agency Appointment

You authorize Amazon Payments, Inc. ("**Amazon Payments**") to act as your agent for purposes of processing payments, refunds and adjustments for Your Transactions, receiving and holding Sales Proceeds on your behalf, remitting Sales Proceeds to Your Bank Account, charging your Credit Card, and paying Amazon and its Affiliates amounts you owe in accordance with this Agreement or other agreements you may have with Amazon Affiliates. Amazon Payments provides the services described in these Transaction Processing Service Terms and the related services described in Sections S-1.4, S-2.2, S-6, W-3.2, W-3.3, W-3.4, W-6.3.2, W-6.3.3, W-7.5, and F-8.3 of the Agreement (collectively, the "**Transaction Processing Services**").

When a buyer instructs us to pay you, you agree that the buyer authorizes and orders us to commit the buyer's payment (less any applicable fees or other amounts we may collect under this Agreement) to you. You agree that buyers satisfy their obligations to you for Your Transactions when we receive the Sales Proceeds. We will remit funds to you in accordance with this Agreement.

P-2 Remittance

Amazon Payments will remit funds to you in accordance with Sections S-6 and W-6.3.2 of the Agreement and these Transaction Processing Service Terms. Amazon Payments' obligation to remit funds collected by it on your behalf is limited to funds that have actually been received by Amazon Payments less amounts owed to Amazon, subject to chargeback or reversal or withheld for anticipated claims in accordance with this Agreement. Without limiting Amazon's rights to collect any amounts you owe, including as described in Section 2 of the General Terms of this Agreement, Amazon Payments' receipt of Sales Proceeds discharges your obligation to pay applicable fees and other amounts under this Agreement to the extent the Sales Proceeds equal or exceed the fees and other amounts you owe and the Sales Proceeds are applied to the payment of those fees and amounts.

P-3 Your Funds

Your Sales Proceeds will be held in an account with Amazon Payments (a "**Seller Account**") and will represent an unsecured claim against Amazon Payments. Your Sales Proceeds are not insured by the

Federal Deposit Insurance Corporation. Prior to disbursing funds to you, Amazon Payments may combine Sales Proceeds held with the funds of other users of the Services, invest them, or use them for other purposes permitted by applicable Laws. You will not receive interest or any other earnings on any Sale Proceeds. To the extent required by applicable Laws, Amazon Payments will not use any funds held on your behalf for its corporate purposes, will not voluntarily make such funds available to its creditors in the event of bankruptcy or for any other purpose, and will not knowingly permit its creditors to attach such funds.

P-4 Verification

We may at any time require you to provide any financial, business or personal information we request to verify your identity. You authorize us to obtain from time to time consumer credit reports to establish or update your Seller Account or in the event of a dispute relating to this Agreement or the activity under your Seller Account. You agree to update all Seller Account information promptly upon any change. The [Amazon Payments Privacy Notice](#) applies to your use of the Transaction Processing Services.

P-5 Dormant Accounts

If there is no activity (as determined by us) in connection with your Seller Account for the period of time set forth in applicable unclaimed property laws and we hold Sales Proceeds on your behalf, we will notify you by means designated by us and provide you the option of keeping your Seller Account open and maintaining the Sales Proceeds in your Seller Account. If you do not respond to our notice(s) within the time period we specify, we will send the Sales Proceeds in your Seller Account to your state of residency, as determined by us based on the information in your Seller Account. If we are unable to determine your state of residency or your Seller Account is associated with a foreign country, your funds may be sent to the State of Delaware.

Increase Your Chances of Winning the Buy Box

Since seller performance metric targets can vary by category and are subject to change, we do not disclose specific targets for becoming Buy Box eligible. Buy Box eligibility requires meeting very high standards. Excelling in all areas that deliver an outstanding customer experience is the best way to achieve Buy Box eligibility and win the Buy Box, including:

Pricing

- Price competitively. Customers trust that they will find low prices on Amazon.com.
- Watch your competition to stay competitive. View the price of the offer that is currently winning the Buy Box. On the Manage Inventory page, click the **Preferences** button, and select **Show when available** for the current Buy Box winning price. Buy Box winning prices are displayed for "New" condition listings only.

Availability

- Keep stock available. If you have no current stock for a product, you cannot win the Buy Box. Use inventory planning best practices to keep your popular products in stock.
- Update your inventory. Customers who submit orders for products that are not in stock are likely to leave negative feedback, especially around the holidays. To ensure that buyers cannot place orders for out-of-stock items, keep your inventory updated.
- Plan vacations. If you are going on vacation, make sure that customers are not left waiting for orders to arrive. See **Listings Status** for more information.

Fulfillment

- Offer multiple shipping options on your products, including free shipping. You can manage your available shipping options in **Shipping Settings**.

Customer service

- Customer service is measured in numerous ways. Excelling in all areas can help you succeed on Amazon. The **Account Health** page on the Performance link can help you track your customer metrics.

See also

- Listing Status Settings for Vacations, Holidays, and Other Absences
- Current Shipping Rates and Settings
- Account Health
- Seller Performance Measurement

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Seller performance measurement

Amazon places high importance on maintaining the trust of our millions of satisfied buyers. We have established performance targets for sellers so that buyers can shop with a sense of safety and security about their third-party Marketplace transactions.

Seller performance targets

Watch this short video:  [Intro to Seller Performance](#)

All sellers should be working toward achieving and maintaining a level of customer service that meets the following seller performance targets for every product they sell:

- Order defect rate: < 1%
- Pre-fulfillment cancel rate: < 2.5%
- Late shipment rate: < 4%

Failure to meet these targets may result in the removal of your selling privileges.

Note: Performance targets for Premium Shipping orders vary from the above. See [Premium Shipping Options](#) for more information.

Note: Sellers are required to provide valid tracking numbers for 95% of shipments. Failure to meet the required tracking rate may result in the loss of seller-fulfilled selling privileges within the respective category and may affect your eligibility to participate in Premium Shipping Options. For more information, see [Valid Tracking Rate](#).

Measure seller performance

The following customer metrics are used to measure seller performance:

Order defect rate (ODR)

This is the percentage of your orders that have received a negative feedback, an A-to-z Guarantee claim or a service credit card chargeback. It allows us to measure overall performance with a single metric.

- A seller who maintains a low percentage of negative feedback reflects our customer-centric philosophy. One- and two-star ratings are considered negative.
- A seller who works proactively with customers to resolve order problems will avoid most A-to-z Guarantee claims. We measure your claims rate using the percentage of all orders, of any status, that involved a claim.
- When a buyer disputes a purchase charged to their credit card with their bank, it's referred to as a [service chargeback](#) request.

Note: For details about communication with buyers, see [the Buyer-Seller Messaging Service](#).

Pre-fulfillment cancellation rate

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This is the number of seller-fulfilled orders cancelled by a seller prior to ship-confirmation divided by the number of seller-fulfilled orders in the relevant time period. To calculate this metric, we consider all order cancellations initiated by the seller for any reason.

Late shipment rate

This is the number of seller-fulfilled orders with shipments that are not confirmed by the expected ship date divided by the number of seller-fulfilled orders in the relevant time period. Orders that are ship-confirmed late may lead to increased customer contacts and negatively impact customer experience.

Performance review and notification process

We regularly review the performance of all sellers and notify them when they are off-target. This review process is designed to give you time to improve your performance.

In most cases, we contact sellers with poor performance to ask for measurable improvement within 60 days of the first warning. Occasionally, sellers with very poor performance are immediately suspended or blocked.

If your seller account has been suspended or blocked, you may be eligible for reinstatement. You can appeal our decision by providing our Seller Performance team with a plan of action for correcting the problems that have contributed to this action. Learn how to [Appeal the restriction or removal of selling privileges](#).

Monitor your performance with Customer Metrics

We strongly encourage all sellers to monitor their performance regularly using the [Customer Metrics](#) tool in their seller account. This tool provides data on all of the performance metrics so you can easily see if you are meeting our targets.

For detailed information about each performance metric and how to use the Customer Metric tool, read our [Customer Metrics Overview](#) and [Customer Metrics Scorecard](#) Help pages.

Seller performance measurement

- [Appeal the restriction or removal of selling privileges](#)
- [Seller performance measurement FAQ](#)

Selling on Amazon Fee Schedule

Note: The Fee Schedule for selling on Amazon.ca is available on this page: [Amazon.ca Fee Schedule](#).

Amazon collects the lower of the applicable fees stated below and any fees communicated to you by Amazon (such as promotional fees that Amazon may provide from time to time). This does not apply to certain sellers, such as warranty providers and other service providers, who will continue to pay selling fees in accordance with the rates provided in their program agreements.

You can also view more details about your fees with the [Detailed Fee Explainer](#).

Monthly subscription fee

- Professional Selling Plan: USD\$ 39.99 per month
- Individual Selling Plan: No subscription fee

Selling fees

When your item sells, Amazon collects the amount paid by the buyer (including the item price and any shipping, gift wrap, or other charges). Amazon shipping rates may apply to media products (book, music, video, and DVD products) sold by Professional sellers, and to all products sold by Individual sellers. Only Professional sellers can offer gift wrap.

See [Shipping Credits for BMVD](#) for a table of Amazon shipping credits for media products. For a table of Amazon shipping rates for all products sold by Individual sellers, see [Shipping Credits for Individual Sellers](#).

Per-item fees

- Professional sellers: No per-item fee
- Individual sellers: USD\$ 0.99 fee for each item sold

Referral Fees

Sellers pay a referral fee on each item sold. Items in several categories have a per-item minimum referral fee as listed below (for example, sellers pay the greater of the referral fee or the per-item minimum referral fee).

For all products, Amazon deducts the applicable referral fee percentage calculated on the total sales price, excluding any taxes calculated through Amazon tax calculation services. The total sales price is the total amount paid by the buyer, including the item price and any delivery or gift wrapping charges.

Referral fees vary by category, as listed below.

For sellers who use Fulfillment by Amazon, please see the [FBA Features and Fees](#).

Registered Amazon Business sellers should refer to the [Selling on Amazon Business Fee Schedule](#) for applicable referral fees.

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Prior approval may be required to offer products in the categories listed under "Categories Requiring Approval." [Learn more](#)

Categories	Amazon deducts the greater of the applicable referral fee percentage or applicable per-item minimum referral fee. See "Referral Fees" notes above.	
	Referral Fee Percentages	Applicable Minimum Referral Fee (applied on a per-item basis unless otherwise noted)
Amazon Device Accessories	45%	\$1.00
Baby Products (excluding Baby Apparel)	15%	\$1.00
Books ¹	15%	--
Camera and Photo ¹	8%	\$1.00
Cell Phone Devices*	8%	\$1.00
Consumer Electronics	8%	\$1.00
DVD ¹	15%	--
Electronics Accessories	15% for the portion of the total sales price up to \$100; and 8% for any portion of the total sales price greater than \$100	\$1.00
Furniture & Decor	15%	\$1.00
Home & Garden (including Pet Supplies)	15%	\$1.00
Kitchen	15%	\$1.00
Major Appliances	15% for the portion of the total sales price up to \$300; and 8% for any portion of the total sales price greater than \$300	\$1.00

Music ¹	15%	--
Musical Instruments	15%	\$1.00
Office Products	15%	\$1.00
Outdoors	15%	\$1.00
Personal Computers	6%	\$1.00
Software & Computer/Video Games ¹	15%	--
Sports (excluding Sports Collectibles)	15%	\$1.00
Tools & Home Improvement	15%, except 12% for base equipment power tools	\$1.00
Toys & Games ²	15%	\$1.00
Unlocked Cell Phones	8%	\$1.00
Video & DVD ¹	15%	--
Video Game Consoles ¹	8%	--
Everything Else ³	15%	--
<u>Categories Requiring Approval</u>	Referral Fee Percentages	Applicable Minimum Referral Fee
3D Printed Products	12%	--
Automotive & Powersports	12%, except 10% for tires and wheels products	\$1.00
Beauty	15%	\$1.00
Clothing & Accessories	15%	\$1.00
Collectible Books	15%	--
Collectible Coins	See <u>Category Requirements</u> for referral fees.	
Entertainment Collectibles	See <u>Category Requirements</u> for referral fees.	
Fine Art	See <u>Category Requirements</u> for referral fees.	

Gift Cards	20%	--
Grocery & Gourmet Food**	15%	--
Health & Personal Care (including Personal Care Appliances)	15%	\$1.00
Industrial & Scientific (including Food Service and Janitorial & Sanitation)	12%	\$1.00
Jewelry	20%	\$2.00
Luggage & Travel Accessories	15%	\$1.00
Shoes, Handbags & Sunglasses	15%	\$1.00
Sports Collectibles	See Category Requirements for referral fees.	
Watches	• 16% for the portion of the total sales price up to \$1,500; and • 3% for any portion of the total sales price greater than \$1,500	\$2.00

*Certain cell phone devices may require approval. Please see [here](#) to learn more.

**Beginning 10/15/2017 through 10/14/2018, referral fees for Grocery & Gourmet items with a total price of \$15 or less will be 8%, instead of 15%. Grocery & Gourmet items with a total price above \$15 will be 15%.

†Accessory products fall in the [Electronics Accessories](#) category.

‡The \$1.00 per item minimum referral fee does not apply to Collectible Cards products in the Toys & Games category.

§The Everything Else category is available to sellers for products that do not clearly fit within existing categories. Do not list items in the Everything Else category that appropriately fall within another category.

¶Beginning March 1, 2017, referral fees for media products will be calculated on the total sales price of a product, rather than the item price.

Rental Book Service Fee

For each textbook rental that is sold, sellers pay a rental book service fee of USD \$5.00.

Closing fees

Sellers also pay a closing fee of \$1.80 per media item that is sold. Media categories are Books, DVD, Music, Software & Computer/Video Games, Video, and Video Game Consoles.

High-volume listing fee

We charge a monthly High-Volume Listing Fee based on the number of active offers for non-media ASINs you list on Amazon. We identify non-media ASINs where: (i) you have an active offer, (ii) the ASIN was created more than 12 months ago, and (iii) the ASIN has not had a sale from any seller in the past 12 months. Your first 100,000 ASINs that meet these criteria will not be charged the High-Volume Listing Fee. For each additional ASIN (above the first 100,000) that meets these criteria, you will be charged a monthly High-Volume Listing Fee of \$0.005 per ASIN. The High-Volume Listing Fee will be charged monthly and will be applied to your highest number of applicable ASINs above 100,000 at any time during that month.

For example, if during a month, you had active offers on 300,000 non-media ASINs that have not had a sale by any seller in the previous 12 months and have been listed on Amazon for at least 12 months, the fee applied for that month would be \$1,000. This is calculated as 300,000 minus the 100,000 that are not charged this fee, which equals 200,000 ASINs that would be charged \$0.005 each.

The fee will be calculated and charged monthly and shown in the next month's statement.

Refund Administration Fee

If you refund a customer for an order for which you have already received payment, Amazon will refund you the amount of the Referral Fee you paid for the item(s), minus the applicable Refund Administration Fee, which is the lesser of \$5.00 or 20% of the applicable Referral Fee.

For example, if you refund a customer the \$10.00 total sales price of an item in a category with a 15% Referral Fee, your Refund Administration Fee will be \$0.30 ($\$10.00 \times 15\% \text{ Referral Fee} = \$1.50$).

Examples for Books, Music, Video, DVD, Software, and Video Game Products

Individual selling plan example:

Item price

+ Shipping charges paid by the buyer

- Referral fee

- Closing fee of \$1.80

- \$0.99 per item fee

= Total deposited to seller account

Professional selling plan example:

Item price

+ Shipping charges paid by the buyer

- Referral fee

- Closing fee of \$1.80

= Total deposited to seller account

Examples for Watch Products

Examples of referral fee calculations for Watches products:

Sales Price	Example 1: Referral fee for a \$8.00 watch	Example 2: Referral fee for a \$1,500.00 watch	Example 3: Referral fee for a \$7,000.00 watch	
For the portion of the total sales price up to \$1,500.00	\$2.00	\$240.00	\$240.00	
For any portion of the total sales price from \$1,500.01 and above	\$0.00	\$0.00	\$165.00	
Referral Fee	\$2.00	\$240.00	\$405.00	

Examples for Other Products

Individual selling plan example:

Item price

+ Shipping charges paid by the buyer

- Referral fee

- \$0.99 per item fee

= Total deposited to seller account

Professional selling plan example:

Item price

+ Shipping charges paid by the buyer

+ Gift wrap charges paid by the buyer

- Referral fee

= Total deposited to seller account

Selling on Amazon Fee Schedule

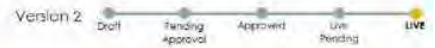
- [Selling on Amazon Business Fee Schedule](#)
- [Detailed Fee Explainer](#)

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Version 2

Time	User	Event
Mar 05 2015, 09:42 US/Pacific [UTC -8]	mannionn	Document live date scheduled
Mar 05 2015, 09:09 US/Pacific [UTC -8]	sullivan	Document content approved
Mar 04 2015, 16:45 US/Pacific [UTC -8]	mannionn	Document submitted for approval
Mar 04 2015, 16:43 US/Pacific [UTC -8]	mannionn	Document content approved
Jan 09 2015, 10:18 US/Pacific [UTC -8]	mannionn	Document submitted for approval
Jan 09 2015, 10:13 US/Pacific [UTC -8]	mannionn	Document updated
Jan 09 2015, 10:13 US/Pacific [UTC -8]	mannionn	Document updated
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Jan 09 2015, 10:08 US/Pacific [UTC -8]	mannionn	Document updated
Jan 09 2015, 10:07 US/Pacific [UTC -8]	mannionn	Document updated

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The following terms apply to the tax collection services Amazon makes available to Marketplace Professional sellers and Amazon Webstore sellers (including Amazon Wine sellers).

Registration. If you are a Marketplace Professional seller or Amazon Webstore seller, you may register for tax collection services by providing to Amazon, in the format and manner we require, collection settings for the jurisdictions for which you wish to collect taxes or other transaction-based charges that we support for your Marketplace Professional or Amazon Webstore transactions, and any related information we request.

Collection Services. We will collect sales and use taxes and other transaction-based charges supported by the functionality we make available for Marketplace Professional or Amazon Webstore transactions based on your collection settings and any related information we request.

Tax Collection Services Fees. If you use the tax collection services, you will pay us the following fees:

Seller Type	Fee
Selling on Amazon	2.9% of all sales and use taxes and other transaction-based charges we collect.
Amazon Webstore	Sales tax collection service fees are included in the Amazon Webstore Payment Processing and Fraud Protection fees calculated on total sales proceeds.

We will retain these fees in the event of any refund on related transactions.

Product Tax Codes and Associated Information. We will make available a list of product tax codes and associated product taxability rules. For each of your products, you will provide to us,

in the format and manner we require, a reference to one of our product tax codes and any related information we request. If you do not provide a reference to one of our product tax codes for a product, we will not collect any tax amounts for your transactions for that product.

Remittance. We will remit to you the amounts we collect through the tax collection services according to the schedule on which we remit funds for your Marketplace Professional or Amazon Webstore transactions. You agree to accept the amounts we remit to you as full satisfaction of our obligations in connection with the tax collection services.

Calculation of Refunds. For products you fulfill, you are responsible for calculating refunds of all taxes and other transaction-based charges collected through the tax collection services, and you will process them using functionality we make available through your seller account. For products we fulfill, we will calculate and process refunds of all taxes and other transaction-based charges collected through the tax collection services.

Tax Exemption. If you have a Professional selling plan and are registered for tax collection services, you may choose to participate in the Amazon Tax-Exemption Program. If you participate in this program, certain sales of yours will be treated as tax exempt when purchased by customers who have provided us with tax exemption information.

Calculation of Refunds for Exempt Transactions. If you participate in ATEP and a customer seeks a post-order tax-only refund related to an exemption for products you fulfilled, you are responsible for calculating refunds of all taxes and other transaction-based charges collected through the tax collection services, and you will process them using functionality we make available through your seller account. If you participate in ATEP

and a customer seeks a post-order, tax-only refund related to an exemption for products we fulfilled, the tax will be refunded only if we receive supporting documentation that meets our requirements.

Your Responsibilities. You are solely responsible for your use of the tax collection services, including the Amazon Tax Exemption Program. Your responsibilities include reviewing and determining the correct product tax codes, collection settings and all related information for your products and for documenting and paying all taxes to the appropriate taxing authorities for your transactions. You are solely responsible for reviewing all tax exemption information and complying with all applicable laws and regulations related to tax-exempt transactions. Amazon disclaims all responsibility for your use of the tax collection services. Except to the extent Amazon makes specific services available to you:

- (i) Amazon does not calculate or collect any product-based excise taxes or any fees or surcharges;
- (ii) Amazon does not provide support for sales or use tax exemptions based upon the identity of any individual, corporation or other entity, or the intended use of a product by any individual, corporation or other entity; and
- (iii) You are solely responsible for any non-U.S. taxes and duties (including their collection and payment).

FBA features and fees

FBA fees cover the cost of storing your products in Amazon's fulfillment centers, picking, packing, and shipping orders, and providing customer service for products sold. As part of FBA, you also have access to optional features and services to help you manage and grow your business.

FBA features

Amazon Partnered Carrier program Amazon-partnered carriers offer deeply discounted rates for shipping your inventory to Amazon.

Customer service for FBA orders Amazon provides customer service on your behalf when you sell products through FBA.

Global selling Use FBA and the tools available in your seller account to expand your business globally.

Multi-channel fulfillment Have Amazon fill orders for inventory that you sell on your own website as well as other channels.

FBA Small and Light FBA Small and Light is specially designed for your fast-moving small and light products.

FBA services

FBA Label Service Amazon will apply barcode labels to your inventory for you. A per-item fee applies.

FBA Prep Service Amazon will prep your inventory so that it meets FBA prep requirements. A per-item fee applies.

FBA Repackaging Service Amazon will repackage your eligible FBA items that are returned by customers so that they can be resold.

Inventory Placement Service When you create a shipping plan, your shipment may be split into multiple shipments going to different fulfillment centers. With the Inventory Placement Service, you can send all of your inventory to a single fulfillment center, and Amazon will distribute the inventory for you. A per-item fee applies.

FBA fees

Fulfillment fees for FBA orders An overview of FBA fees for order fulfillment and related services.

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FBA revenue calculator Use the FBA revenue calculator to estimate your fees for specific items using active listings on Amazon.

Fee Preview Estimate the FBA fees for products in your FBA inventory.

Order handling, Pick & Pack, and weight handling fees Calculate your per-order FBA fees using the product size tier.

Monthly inventory storage fees Storage fees are charged for all items stored in an Amazon fulfillment center based on calendar month and your daily average volume of inventory.

Long-term storage fees Inventory in Amazon fulfillment centers is assessed a long-term storage fee in addition to the monthly storage fee.

Removal order fees You can have Amazon return or dispose of your inventory in Amazon fulfillment centers. A per-item fee applies.

Returns processing fees A returns processing fee is charged for orders for which Amazon offers free return shipping.

Unplanned service fees When inventory arrives at a fulfillment center without proper preparation or labeling, Amazon performs service for you. A per-item fee applies.

Product size tier Determine the size tier for your product in order to determine the applicable fulfillment fees.

FBA features and fees

- Add-on program
- 2017 Multi-Channel Fulfillment U.S. fee changes
- 2018 Fulfillment by Amazon U.S. fee changes
- FBA Fulfillment Fees
- FBA Subscribe & Save
- Shipping products to Amazon
- Amazon Giveaway for FBA
- FBA Inventory Placement Service
- How Amazon Receives and Stores Your Inventory
- FBA Customer Service
- FBA Global Selling
- FBA Repackaging Service
- FBA Small and Light

- Liquidate your inventory

Premium Shipping options

Premium Shipping allows sellers to provide fast shipping options to customers. These fast shipping options, with tracking, can improve the customer experience by communicating a clear delivery day.

In the United States, Premium Shipping options include Same-Day Delivery, One-Day Shipping, and Two-Day Shipping. For more information, see [Same-Day Delivery](#), [Requirements for One-Day Shipping](#), and [Requirements for Two-Day Shipping](#).

Participation eligibility

If you've never offered Premium Shipping options before and have been selling on Amazon for more than 90 days, you are eligible to offer Premium Shipping options.

To get started, enable [Same-Day Delivery](#), [One-Day Shipping](#), and/or [Two-Day Shipping](#) in your shipping settings.

Once you start shipping with Premium Shipping options, ongoing eligibility is determined by your delivery performance for orders with Premium Shipping. You can check your [Premium Shipping Eligibility dashboard](#) to see if you're eligible.

To maintain eligibility for Premium Shipping, you must meet or exceed the following requirements for the trailing 30 days:

- **Valid tracking rate:** Greater than or equal to 94% for Premium Shipping option orders. For the United States, this includes tracking IDs from UPS, USPS, FedEx, or OnTrac. To learn more, see [Valid Tracking Rate](#).
- **On-time delivery rate:** Greater than or equal to 92% for Premium Shipping option orders. For more information, see [On-Time Delivery Score](#).
- **Seller-initiated cancel rate:** Less than 1.5% for Premium Shipping option orders. See [Cancellation Rate](#) for more details.
- A valid tracking rate using tracking IDs from UPS, US Postal Service, FedEx, or OnTrac
- On-time delivery rate
- Order defect rate
- Seller-initiated order cancellation rate

Note: Same-Day Delivery has additional requirements to those listed above. Please see [Same-Day Delivery](#) for further details.

Note: Carrier requirements for Same-Day Delivery might vary from those listed above.

Eligibility revocation

If any of your performance metrics fall below the established thresholds for Premium Shipping, your eligibility may be revoked. Premium Shipping options will be disabled on your offers, and your status will change to not eligible in the Premium Shipping Eligibility dashboard.

Eligibility restoration

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Any time after an eligibility revocation, you can submit a [Plan of Action](#) to request that your eligibility be restored.

Guaranteed delivery messaging

For sellers who maintain an on-time delivery rate greater than or equal to 96%, we will automatically display a guaranteed delivery date message at checkout for orders fulfilled with Premium Shipping options.

Note: If a customer contacts you about late delivery for Premium Shipping options orders, redirect them to Amazon Customer Service.

For answers to common questions, see [Premium Shipping options FAQ](#). To learn how to set shipping rates for Premium Shipping Options see [Set your shipping rates](#).

Premium Shipping options

- [Enroll in One-Day Shipping](#)
- [Same-Day Delivery](#)
- [Enroll in Two-Day Shipping](#)
- [Premium Shipping options FAQ](#)
- [Submit a Plan of Action for Premium Shipping Options](#)

Product detail page rules

Customers first learn about your offers on a product detail page. The following policies have been established to ensure that each product detail page represents a unique item in order to deliver a single page per product and optimize the buying experience.

Content-specific policies

Comply with the style guide that applies to the product you're listing. The general styles that apply to all categories can be found at [Amazon Services Quick Start Style Guide](#). Some categories have additional guidelines; the full set of category-specific style guidelines can be found at [Templates for Specific Categories](#).

Do not include HTML, JavaScript, or other types of executables other than break (
) in your detail pages. You can use break to provide the necessary line breaks when providing the description.

The inclusion of any of the following information in detail page titles, descriptions, bullet points, or images is prohibited:

- ❑ Pornographic, obscene or offensive content.
- ❑ Phone numbers, physical mail addresses, e-mail addresses, or website URLs.
- ❑ Availability, price, condition, alternative ordering information (such as links to other websites for placing orders), or alternative shipping offers (such as free shipping).
- ❑ Spoilers regarding Books, Music, and Video or DVD (BMVD) listings (information that reveals plot elements crucial to the suspense, mystery or surprise ending of a story).
- ❑ Reviews, quotes or testimonials.
- ❑ Solicitations for positive customer reviews.
- ❑ Advertisements, promotional material, or watermarks on images, photos or videos.
- ❑ Time-sensitive information such as dates of promotional tours, seminars, lectures, and so on.

Product title length must not exceed a maximum of 200 characters (including spaces) in all categories. Some of the categories may have a different maximum title length than 200 characters. To know the accurate maximum title length for your respective category, please refer to your category specific style guide.

Comply with Amazon listing standards for any product sold on Amazon.

- ❑ All products must be appropriately and accurately categorized.
- ❑ Product titles, product descriptions, and bullets must be clearly written and assist the customer in understanding the product.
- ❑ All product images must meet Amazon general image standards as well as any applicable category-specific image guidelines.

Detail page creation policies

Use of Add a Product, inventory files, and Amazon Marketplace Web Services (Amazon MWS) listing APIs for any purpose other than listing products on Amazon is prohibited.

The use of false product identification information—including UPC codes or publication dates—in product detail pages is prohibited.

The creation of product detail pages is limited to products that do not already exist within Amazon's catalog. Creating a product detail page for a product already in the Amazon catalog is prohibited.

Using product detail pages to cross-merchandise or cross-promote a product is prohibited.

For Books, Music, Videos, and DVDs (BMVD) a single detail page may not be used to advertise more than one product.

BMVD-only product bundles must be defined by the publisher or manufacturer and have a single ISBN, UPC, or EAN that is different from the product identifier for any unique item in the bundle.

Detail pages may not feature or contain Restricted Products.

All products listed on Amazon must meet North America product safety standards. Learn more about [Choking Hazard Warning Requirements \(CPSIA\)](#).

You should not update an existing listing for a new version of a product. This includes changes in color, size, material, features, and product name. You should create a new product detail page for new versions of products. For example, a manufacturer updates its streaming media player by introducing a new remote control with four buttons instead of two buttons on the old remote. This is materially different from the previous version and must be listed as a new ASIN.

Product Pricing and Selection Guidelines

All Sellers must adhere to the following policies when listing Products on Amazon.

Parity

To ensure that our customers have access to a large selection of Products at competitive prices

Selection: At a minimum, list your top-selling subscription product. Amazon customers want the best you have! Other than this requirement, you are free to determine which of your products you decide to offer through the Subscribe with Amazon Program.

Price: For any Product, ensure that there is parity between the terms of offers on Amazon and those in Seller Sales Channels. This means that you will list it at a Purchase Price and on terms that are at least as favorable to Amazon customers as the most favorable terms you set on other Seller Sales Channels.

Exceptions to Parity Requirement

This parity requirement does not affect your ability to offer your Products elsewhere as part of "bundles," including bundles with physical products, that the Subscribe with Amazon Program does not support.

Non-compliance with Parity Requirement

If for any reason you don't comply with this parity requirement, Amazon may give you notice of such non-compliance in writing (including via email). If you are not in compliance with the requirements of these Product Pricing and Selection Guidelines within 24 hours of Amazon's initial notice to you, you authorize Amazon, on your behalf, to immediately reduce the Purchase Price on the applicable Product and match any other more favorable terms until you demonstrate to Amazon that you are in compliance. In addition, if requested, you will cooperate with Amazon to compensate adversely affected customers, including by making, or authorizing Amazon to make on your behalf, appropriate refunds to them.

Pricing Changes

You may adjust the Purchase Price of your Product at any time. However, we do not currently support functionality that allows you to change the renewal Purchase Price.

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Prohibited seller activities and actions

These prohibited seller activities and actions are established to maintain a selling program that is safe for buyers and fair for sellers of both products and services. Failure to comply with the terms of this policy can result in cancellation of listings, suspension from use of Amazon tools and reports, and the removal of selling privileges. In addition, we do not pay sellers until we are confident that customers have received the products they ordered, and if we determine that a seller account has been used to engage in fraud or other illegal activity, remittances and payments may be withheld or forfeited.

Note: This policy is in addition to, and in no way limits, your other obligations pursuant to your seller agreement or otherwise.

General guidelines

The following guidelines apply to both sellers of products and services. For guidelines specific to products see the information following this section. For guidelines specific to services, see [Selling Services on Amazon policies](#).

Attempts to divert transactions or buyers:

Any attempt to circumvent the established Amazon sales process or to divert Amazon users to another website or sales process is prohibited. Specifically, any advertisements, marketing messages (special offers) or "calls to action" that lead, prompt, or encourage Amazon users to leave the Amazon website are prohibited. This may include the use of email or the inclusion of hyperlinks, URLs, or web addresses within any seller-generated confirmation email messages or any product/listing description fields.

Unauthorized and improper business names:

Your business name (identifying your business entity on Amazon) must be a name that: accurately identifies you; is not misleading; and that you have the right to use (that is, the name cannot include the trademark of, or otherwise infringe on, any trademark or other intellectual property right of any person). Furthermore, you can't use a business name that contains an email suffix such as .com, .net, .biz, and so on.

Inappropriate email communications:

Unsolicited emails to Amazon customers (other than as necessary for order fulfillment and related customer service) and emails related to marketing communications of any kind are prohibited.

Appropriate treatment of customer phone numbers:

Amazon provides Professional sellers who fulfill their own orders access to customer phone numbers so that they can comply with carrier label requirements. If you receive this customer information, you are required to adhere to Amazon's customer personal information policy, which can be found in our [Seller Agreement](#).

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Please review the policy there and the guidance below to make sure that you are using customers' phone numbers correctly.

- **Proper treatment of customer phone numbers:**
 - Print on labels to comply with carrier requirements.
 - Dispose of any customer phone number data that you retain after you have processed the customers' orders.
 - Monitor who in your organization has access to customer phone numbers—protecting this data is your responsibility.
- **Improper treatment of customer phone numbers:**
 - Never contact a customer using their phone number. To contact a customer about their order, only use [Buyer-Seller Messaging](#). Please see our [Buyer-Seller Messaging FAQ](#) for more information.
 - Never share customer phone information with an external party.
 - Never pass along customer information of any kind, including phone numbers, outside of Buyer-Seller Messaging.

Direct email addresses:

Buyers and sellers may communicate with one another via the [Buyer-Seller Messaging Service](#).

Multiple seller accounts:

Operating and maintaining multiple Seller Central accounts is prohibited. If you have a legitimate business need for a second account, you can apply for an exception to this policy:

1. Go to [Contact us](#).
2. Click [Selling on Amazon](#), then select [Your account](#), and then select [Other account issues](#).

In your request, please provide an explanation of the legitimate business need for a second account. To be considered for approval:

- You must have a separate bank account for each Seller Central account. We will not approve multiple Seller Central accounts that use the same bank account within the same region. If you sell across regions (for example in North America and Europe), you may use the same bank account for your Seller Central accounts as long as your accounts are linked through [Amazon Global Selling](#).
- Each account must have a separate email address.
- The products and services sold in each account must be different.
- Your [Performance Metrics](#) must be in good standing.

We will respond to your request within 2 to 3 business days. Failure to comply with these requirements may result in account termination.

Misuse of the Amazon selling service:

If you upload excessive amounts of data repeatedly, or otherwise use the service in an excessive or unreasonable way, Amazon may in its sole discretion restrict or block your access to product feeds or any other functions that are being misused until you stop its misuse.

Misuse of ratings, feedback, or reviews:

Any attempt to manipulate [ratings](#), [feedback](#), or [reviews](#) is prohibited.

- **Ratings and feedback:** The rating and feedback features allow buyers to evaluate the overall performance of a seller, which helps sellers to develop a reputation within the Amazon Marketplace. You may not post abusive or inappropriate feedback or include personal information about a transaction partner. This also includes posting ratings or feedback to your own account. You may request feedback from a buyer, however you may not pay or offer any incentive to a buyer for either providing or removing feedback.
- **Reviews:** Reviews are important to the Amazon Marketplace, providing a forum for feedback about product and service details and reviewers' experiences with products and services – positive or negative. To ensure that reviews remain helpful, sellers must comply with our [Community Guidelines](#). For example, you may not offer compensation for a review, and you may not review your own products or your competitors' products. You may ask buyers to write a review in a neutral manner, but you may not ask for positive reviews, ask for reviews only from buyers who had a positive experience, or ask a reviewer to change or remove their review. If you think a review does not comply with our Community Guidelines, click on the Report Abuse link next to the review. For more examples of prohibited actions, click [here](#).

Misuse of sales rank:

The best seller rank feature allows buyers to evaluate the popularity of a product. Any attempt to manipulate sales rank is prohibited. You may not solicit or knowingly accept fake or fraudulent orders, including placing orders for your own products. You may not provide compensation to buyers for purchasing your products or provide claim codes to buyers for the purpose of inflating sales rank. In addition, you may not make claims regarding a product's best seller rank in the product detail page information, including the title and description.

Misuse of the Amazon A-to-z Guarantee:

Any misuse of the Amazon A-to-z Guarantee claims process is prohibited. Sellers who have an excessive number or monetary amount of A-to-z Guarantee claims are subject to termination. In cases where a buyer is dissatisfied with a product or service, they can contact the seller to make arrangements for a refund, return, or exchange, as appropriate. Amazon reserves the right to seek reimbursement from the seller if we reimburse a buyer under the terms of the Amazon A-to-z Guarantee.

Misuse of Search and Browse:

When customers use Amazon's search engine and browse structure, they expect to see relevant and accurate results. Any attempt to manipulate the Search and Browse experience is prohibited. Prohibited behaviors include, but are not limited to:

- Artificially simulating customer traffic (through Internet bots, paying for clicks on organic search results, and so on).
- Providing misleading or irrelevant catalog information (title, bullet points, description, variations, keywords, and so on).
- Adding product identifiers (brand names, product names, ASINs, and so on), even if they are your own, to hidden keyword attributes.

For more context and guidelines, see [Optimize listings for Search and Browse](#).

Additional guidelines for sellers

The following guidelines apply to sellers of products:

- **Shipping BMVD Products:** Books, Music, Video, and DVD products offered through Amazon must be shipped within 2 business days of the date the order confirmation is made available to you.

- **Post-transaction price manipulation and excessive shipping fees:** Any attempt to increase the sale price of an product after a transaction has been completed is prohibited. Additionally, sellers cannot set excessive order fulfillment and shipping costs.
- **Matching product offerings inaccurately:** When you list a product for sale using an existing product detail page, the product being offered must be listed on a product detail page that accurately describes the product in all respects, including (but not limited to) the following attributes: manufacturer, edition, binding, version, format, or player compatibility. Sellers may not match their item to a detail page with a different ISBN, UPC, EAN, or other external identifier. Sellers may not match their item to a detail page with a different ISBN, UPC, EAN, or other external identifier.
 - **Exception:** Club editions of audio CDs and rental editions of DVD or Blu-ray discs should be listed against the detail page for the standard edition of the CD, DVD, or Blu-ray, even if the UPCs of the two editions are different, if the following criteria are met:
 - The club or rental edition is listed in Used condition;
 - The content on both editions is identical; and
 - A page with the UPC for the club or rental edition does not already exist in our catalog. Use the listing comments to indicate that the product is a club edition. Format of the products (CD, DVD, Blu-ray) must be identical.
 - Use the listing comments to indicate that the product is a club or rental edition.
- **Duplicate product detail pages:** Creating a product detail page for a product already in the Amazon catalog is prohibited.
- **Separate listings:** Sellers may not create separate listings for identical copies of the same product.
- **Pre-sells of BMVD Products:** Sellers should not list or match against Books, Music, Video, or DVD products that Amazon designates as pre-orderable. BMVD Products offered through Amazon must be shipped within 2 business days of the date the order confirmation is made available to you.

Additional guidelines for service providers

The following guidelines apply to service providers:

- **Upselling:** The service provider must perform the service as outlined in the scope of work on the service detail page on the date the service was purchased. The service provider may not solicit additional products, parts, or service orders before, during, or after the service call.
If the buyer requests services, parts, or products outside of the defined scope of work, then the service provider may fulfill that request and charge the buyer directly.
- **Unapproved technicians:** For in-home services, if you send a non-approved technician to fulfill a service order, your selling privileges may be removed.

2018 Fulfillment by Amazon U.S. fee changes

As in previous years, FBA fees in the U.S. will be adjusted to reflect the changing costs of fulfillment, transportation, and customer service. The new fulfillment fees will take effect on February 22, 2018. We're notifying you now to give you time to plan for these changes.

FBA is introducing the following changes:

Fulfillment Fees: We will adjust our fulfillment fees for most product size tiers and weights. The adjusted fees will apply throughout the year, and we will no longer have a separate rate for October through December. For more information, see [FBA Fulfillment Fees](#) below.

Dimensional Weight Calculation: We are adjusting the way we calculate dimensional weight to align with current industry standards. Currently, dimensional weight is calculated as the unit volume (based on length x width x height in inches) divided by 166. Effective February 22, 2018, we will calculate dimensional weight as the unit volume (based on length x width x height in inches) divided by 139 (instead of 166). The dimensional weight is only applicable for large standard-size items weighing more than 1 lb. and all small, medium, and large oversize items.

FBA inventory storage fees are not changing at this time. We will announce changes to these fees in early 2018.

FBA Fulfillment Fees

The adjusted FBA fulfillment fees shown below will take effect on February 22, 2018. The adjusted fees will apply throughout the year, and we will no longer have a separate rate for October through December.

Starting February 22, 2018, we will calculate dimensional weight as the unit volume (based on length x width x height in inches) divided by 139 (instead of 166, as it was previously). The dimensional weight is only applicable for large standard-size items weighing more than 1 lb. and all small, medium, and large oversize items. Please note that dimensional weight is also used to calculate fees for [Multi-Channel Fulfillment](#) and the [Inventory Placement Service](#).

	Prior to February 22, 2018		February 22, 2018 and after
	January - September	October - December	Year-round Rates
Standard-size			
Small (1 lb. or less)	\$2.41	\$2.39	\$2.41
Large (1 lb. or less)	\$2.99	\$2.88	\$3.19

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<i>Large (1 lb. to 2 lb.)</i>	\$4.18	\$3.96	\$4.71
<i>Large (over 2 lb.)</i>	\$4.18 + \$0.39/lb. above first 2 lb.	\$3.96 + \$0.35/lb. above first 2 lb.	\$4.71 + \$0.38/lb. above first 2 lb.
Oversize	January - September	October - December	Year-round Rates
<i>Small Oversize</i>	\$6.85 + \$0.39/lb. above first 2 lb.	\$6.69 + \$0.35/lb. above first 2 lb.	\$8.13 + \$0.38/lb. above first 2 lb.
<i>Medium Oversize</i>	\$9.20 + \$0.39/lb. above first 2 lb.	\$8.73 + \$0.35/lb. above first 2 lb.	\$9.44 + \$0.38/lb. above first 2 lb.
<i>Large Oversize</i>	\$75.06 + \$0.80/lb. above first 90 lb.	\$69.50 + \$0.76/lb. above first 90 lb.	\$73.18 + \$0.79/lb. above first 90 lb.
<i>Special Oversize</i>	\$138.08 + \$0.92/lb. above first 90 lb.	\$131.44 + \$0.88/lb. above first 90 lb.	\$137.32 + \$0.91/lb. above first 90 lb.
<i>Add \$0.40 per unit for clothing items</i>			

Product Examples

The following product examples help illustrate the new FBA fee structure.

Small standard-size (1 lb. or less)	
	Mobile device case
	Dimensions: 13.8" x 9.0" x 0.7"
	Unit weight: 0.18 lb.
	Outbound shipping weight: 1 lb.
Prior to February 22, 2018	
Fulfillment fee (per-unit total)	
January–September	\$2.41

October–December	\$2.39
February 22, 2018 and after	
Fulfillment fee (per-unit total)	
Year-round Rates	\$2.41
Large standard-size (1 lb. or less)	
	T-shirt Dimensions: 8.5" x 4.8" x 1" Unit weight: 0.35 lb. Outbound shipping weight: 1 lb.
Prior to February 22, 2018	
Fulfillment fee (per-unit total)	
January–September	\$3.39*
October–December	\$3.28*
February 22, 2018 and after	
Fulfillment fee (per-unit total)	
Year-round Rates	\$3.59*

*All clothing items will continue to incur an additional \$0.50 per-unit fulfillment fee regardless of size tier.

Large standard-size (over 2 lb.)	
	Iron
	Dimensions: 12.6" x 6.6" x 5.5"
	Unit weight: 3.35 lb.
	Outbound shipping weight: 4 lb.
Prior to February 22, 2018	
Fulfillment fee (per-unit total)	
January–September	\$4.96
October–December	\$4.66
February 22, 2018 and after	
Fulfillment fee (per-unit total)	
Year-round Rates	\$5.47
Small oversize	
	Baby cot
	Dimensions: 24" x 7.5" x 6"
	Unit weight: 7.90 lb.
	Outbound shipping weight: 9 lb.
Prior to February 22, 2018	
Fulfillment fee (per-unit total)	
January–September	\$9.58

October–December	\$9.14
February 22, 2018 and after	
Fulfillment fee (per-unit total)	
Year-round Rates	\$10.79
Large oversize	
	Monitor
	Dimensions: 54" x 35" x 3.5"
	Unit weight: 41 lb.
	Outbound shipping weight: 49 lb.*
Prior to February 22, 2018 Dimensional weight: 39.85 lb.	
Fulfillment fee (per-unit total)	
January–September	\$75.06
October–December	\$69.50
February 22, 2018 and after Dimensional weight: 47.59 lb.	
Fulfillment fee (per-unit total)	
Year-round Rates	\$73.18

*Based on a dimensional weight of 47.59 lb., which is greater than the unit weight.

Fees for Small and Light and FBA Prep Service will not change at this time.

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2017 FBA Improvements

We remain dedicated to providing high value to our sellers. Here's a look at some of the improvements to FBA in 2017.

Even Faster Free Shipping: We offer Prime FREE One-Day Shipping and Same-Day Delivery in more than 5,000 cities, including pickup on millions of items at campus locations. Unlimited FREE Two-Day Shipping continues to be available to U.S. Prime members on more than 50 million items across all product categories.

International Selling Tools: The Build International Listings tool has expanded to enable FBA sellers who have linked their accounts to replicate Amazon and seller-fulfilled offers and synchronize pricing across North America, Europe, and Japan.

SKU Performance: The new SKU performance feature allows easy access to product sales, pricing, and inventory performance data with a single click of any SKU link on the [Manage Inventory](#) and [Excess Inventory](#) pages, or simply enter your SKU in the Seller Central search bar.

Inventory Performance: The new Inventory Performance Index metric aggregates data from your sales, inventory, and costs to measure the overall growth and efficiency of your FBA business. Based on this metric, we provide you with three specific steps to help increase your score: restock recommendations, excess inventory suggestions, and stranded inventory actions. See [your Inventory Performance Index score](#).

Frequently Asked Questions

When do these changes take effect?

The new fulfillment fees will take effect on February 22, 2018. The adjusted fees will apply throughout the year, and we will no longer have a separate rate for October through December.

Starting February 22, 2018, we will calculate dimensional weight as the unit volume (based on length x width x height in inches) divided by 139 (instead of 166, as it was previously). The dimensional weight is only applicable for large standard-size items weighing more than 1 lb. and all small, medium, and large oversize units. Please note that dimensional weight is also used to calculate fees for [Multi-Channel Fulfillment](#) and the [Inventory Placement Service](#).

Will the FBA fulfillment fee changes apply to products ordered before February 22, 2018?

The FBA fulfillment fees are calculated and charged when shipments leave Amazon fulfillment centers. As a result, if a product is ordered prior to February 22, 2018, but is shipped on or after February 22, 2018, the new FBA fulfillment fees will apply.

How do I determine what product size tier my product belongs to?

Use the [product size tier](#) table to determine your product's size tier.

Will this fee change affect Multi-Channel Fulfillment or the Inventory Placement Service?

The rates for the [Multi-Channel Fulfillment](#) program and the [Inventory Placement Service](#) are not changing at this time. However, please note that dimensional weight is also used to calculate fees for both Multi-

Channel Fulfillment and the Inventory Placement Service, and the way we calculate dimensional weight is changing.

Starting February 22, 2018, we will calculate dimensional weight as the unit volume (based on length x width x height in inches) divided by 139 (instead of 166, as it was previously). The dimensional weight is only applicable for large standard-size items weighing more than 1 lb. and all small, medium, and large oversize items.

Will this fee change affect items in the FBA Small and Light program?

No, [FBA Small and Light](#) program rates will not change at this time.

I have questions not addressed here. How can I get help?

If you've reviewed these fee change details and have additional questions, please contact [Seller Support](#). If you do not have questions but would like to send the FBA team your feedback on this fee change, please e-mail fba-fee-announce-feedback@amazon.com. The Fulfillment by Amazon team will review feedback sent to this address.

For more information, see [Fulfillment fees for FBA orders](#).

Glossary

Small standard-size

Any packaged item that is 12 oz. or less with its longest side 15" or less, its shortest side 0.75" or less, and its median side 12" or less.

Large standard-size

Any packaged item that is 20 lb. or less with its longest side 18" or less, its shortest side 8" or less, and its median side 14" or less.

Small oversize

Any packaged unit that is 70 lb. or less with its longest side 60" or less, its median side 30" or less, and its longest side plus girth 130 inches or less.

Medium oversize

Any packaged unit that is 150 lb. or less with its longest side 108" or less, and its longest side plus girth 130" or less.

Large oversize

Any packaged unit that is 150 lb. or less with its longest side 108" or less, and its longest side plus girth 165" or less.

Special oversize

Any packaged unit that exceeds one or more of the following: Over 150 lb. (dimensional weight or unit weight), over 108" on its longest side, or over 165" when longest side is added to girth. In addition, products that we determine require special handling or delivery will qualify for Special Oversize.

Median side

The dimension of a product that is neither the longest nor the shortest side.

Girth

A unit measure, equivalent to $2 \times (\text{median side} + \text{shortest side})$.

Unit weight

The weight of an individual unit.

Buyer-Seller Messaging Service overview

The [Buyer-Seller Messaging Service](#) lets you communicate with buyers in the Amazon marketplace via email or Seller Central. The service uses encrypted email addresses for both buyers and sellers. For example, a buyer who contacts you is assigned an encrypted alias like `a222d34b3891234b@marketplace.amazon.com`. Emails are then routed to you via the encrypted alias.

To get started, see [Communicate with buyers using the Buyer-Seller Messaging Service](#).

Guidelines for contacting buyers

In general, you can contact a buyer only to complete an order or to respond to a customer service question. You can't contact a buyer (including via email, physical mail, telephone, or otherwise) for marketing or promotional purposes, or initiate contact with a buyer about a return containing an FBA item designated as a gift.

If you send a permitted email to an Amazon customer, your message cannot include:

- Links to any websites
- Links to Amazon detail pages or storefronts
- Seller logos if they contain or display a link to the seller's website
- Any marketing messages or promotions
- Any promotions for additional products or referrals to third-party products or promotions

Benefits of Buyer-Seller Messaging

Buyer-Seller Messaging keeps a record of all buyer-seller correspondence. Even when you respond using your personal or business email, the service records it using an encrypted email alias.

Benefits include:

- Increased security of buyer-seller communication.
 - One place to view all your sent and received messages, whether from the service or from your email system (including Outlook, Hotmail, Gmail, Thunderbird, GMX, and so on).
 - Improved buyer-seller communication to help reduce disputes and claims.
 - A record of all buyer-seller correspondence, resulting in faster dispute resolution by Amazon.
- For more information, see [Buyer-Seller Messaging frequently asked questions](#).

Contact Response Time Metrics

Responses to Buyer-Seller Messages are evaluated using [Contact Response Time Metrics](#). Contact Response Time measures the percentage of customer-initiated messages that you respond to within 24 hours.

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AS0000704

Setting your listing status to inactive (for vacations and other absences) does not deactivate Buyer-Seller Messaging. Contact Response Time is measured even while your listings are inactive.

To flag a message as not requiring a response (when a conversation has ended or for "out of office" messages from buyers), select **Mark as no response needed** in the **Reply** area of the communication thread. This excludes the message from calculations.

Enable product questions for FBA orders

If you fulfill your own orders, Buyer-Seller Messaging is enabled by default. Fulfillment by Amazon (FBA) sellers can turn on Buyer-Seller Messaging to respond to specific product questions and help improve the FBA buyer's experience. Your specialized product knowledge can help reduce product return rates and encourage repeat purchases.

Note: FBA Buyer-Seller Messaging is for product inquiries only. You can only respond to (and can't initiate) messages about returns containing an FBA item designated as a gift. Customer service related inquiries on Amazon-fulfilled orders, such as how or where to return a purchased item, should be redirected to Amazon Customer Service.

To enable Buyer-Seller Messaging for buyers to send you messages about your products:

1. On the Settings menu, select **Fulfillment by Amazon**.
2. Under **Product Support**, click **Edit**.
3. Select **Enable**, and then click **Update**.

FBA fulfillment fees for Amazon.com orders

You can use the [category type](#) and [product-size tier](#) to calculate your FBA fees. For more information about the outbound shipping weight, see [Calculating the outbound shipping weight](#) later in this article.

For a limited time, Amazon Business sellers who provide [quantity discounts](#) for FBA business offers may qualify for a fee discount. For more information, see [Selling on Amazon Business fee schedule](#).

Standard-size product tiers

Applies to domestic and international orders.

FBA fulfillment fees (standard-size)				
	<i>Small standard-size (1 lb. or less)</i>	<i>Large standard-size (1 lb. or less)</i>	<i>Large standard-size (1 to 2 lb.)</i>	<i>Large standard-size (over 2 lb.)</i>
January–September	\$2.41	\$2.99	\$4.18	\$4.18 + \$0.39/lb. above the first 2 lb.
October–December	\$2.39	\$2.88	\$3.96	\$3.96 + \$0.35/lb. above the first 2 lb.

Examples

Small standard-size (1 lb. or less)	
	Mobile device case Dimensions: 13.8" x 9.0" x 0.7" Unit weight: 0.18 lb. Outbound shipping weight: 1 lb.
January–September	\$2.41

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October–December	\$2.39
Large standard-size (1 lb. or less)	
	T-shirt Dimensions: 8.5" x 5.8" x 1" Unit weight: 0.35 lb. Outbound shipping weight: 1 lb.
January–September	\$3.39 ‡
October–December	\$3.28 ‡

‡Clothing items will continue to incur an additional \$0.40 per-unit fulfillment fee.

Large standard-size (over 2 lb.)	
	Iron Dimensions: 12.6" x 6.6" x 5.5" Unit weight: 3.35 lb. Outbound shipping weight: 4 lb.
January–September	\$4.96
October–December	\$4.66

Oversize product tiers

Applies to domestic orders only.

FBA fulfillment fees (oversize)

	<i>Small oversize</i>	<i>Medium oversize</i>	<i>Large oversize</i>	<i>Special oversize</i>
January–September	\$6.85 + \$0.39/lb. above the first 2 lb.	\$9.20 + \$0.39/lb. above the first 2 lb.	\$75.06 + \$0.80/lb. above the first 90 lb.	\$138.08 + \$0.92/lb. above the first 90 lb.
October–December	\$6.69 + \$0.35/lb. above the first 2 lb.	\$8.73 + \$0.35/lb. above the first 2 lb.	\$69.50 + \$0.76/lb. above the first 90 lb.	\$131.44 + \$0.88/lb. above the first 90 lb.

A \$40 special handling fee applies to plasma and projection large-screen televisions with screens 42" or larger. However, smaller televisions may qualify for the special handling fee based on other factors such as weight and fragility.

Examples**Small oversize**

	Baby cot Dimensions: 25" x 8" x 7" Unit weight: 7.05 lb. Outbound shipping weight: 10 lb.
January–September	\$9.97
October–December	\$9.49

Large oversize



Monitor

Dimensions: 54" x 35" x 3.5"

Unit weight: 48.45 lb.

Outbound shipping weight: 50 lb.

January–September

\$75.06

October–December

\$69.50

Calculating the outbound shipping weight

Standard-size and special oversize

The outbound shipping weight is calculated for each individual unit by adding the packaging weight to the unit weight. The total for each unit is rounded up to the nearest pound. The outbound shipping weight is then used to calculate the fulfillment fee based on the rates listed above.

Large standard-size items weighing more than 1 lb., small oversize, medium oversize, and large oversize

The outbound shipping weight is calculated for each individual unit by adding the packaging weight to the greater of the unit weight or the dimensional weight. The total for each unit is rounded up to the nearest pound. The outbound shipping weight is then used to calculate the fulfillment fee based on the rates listed above.

Product size tier and category	Packaging weight	Outbound shipping weight
Small standard-size	4 oz (0.25 lb.)	Unit weight + packaging weight (total rounded up to the nearest whole pound)

Large standard-size	4 oz (0.25 lb.)	The greater of the unit weight¹ or dimensional weight² + packaging weight³ (total rounded up to the nearest whole pound)
Oversize	16 oz (1.00 lb.)	The greater of the unit weight¹ or dimensional weight² + packaging weight³ (total rounded up to the nearest whole pound)
Special oversize	16 oz (1.00 lb.)	Unit weight¹ + packaging weight³ (total rounded up to the nearest whole pound)

Note: Unit weights, dimensions, and other measures used to calculate fees are as determined by Amazon and are subject to variations based on packaging. Dimensions may change based on packaging type.

- ¹ The unit weight is the weight of an individual unit.
- ² The packaging weight is the weight of the box and packing materials. Amazon uses these standardized weights for the purpose of calculating outbound shipping weight.
- ³ The dimensional weight is the unit volume (based on length x width x height in inches) divided by 166. For large standard-Size units weighing more than 1 lb. and all small oversize, medium oversize, and large oversize units, we use dimensional weight when the dimensional weight is greater than the unit weight.

Unit weight greater than dimensional weight



Disposable plates
Dimensions: 6.3" x 6.2" x 4.8"

Unit weight: 3.00 lb.

Dimensional weight: 1.1 lb.

Outbound shipping weight: 4 lb. (based on unit weight, which is greater than dimensional weight)

January–September \$4.26

October–December \$4.66

Dimensional weight greater than unit weight

Glass jars
Dimensions: 16.6" x 13.3" x 7.7"

Unit weight: 6.6 lb.

Dimensional weight: 10.2 lb.

Outbound shipping weight: 11 lb. (based on dimensional weight, which is greater than unit weight)

January–September \$7.66

October–December \$7.11

FBA Inventory Placement Service

By default, when you create a shipping plan, your shipment may be divided into multiple shipments, each directed to a different receive center or fulfillment center (referred to as distributed inventory placement). The fulfillment centers are selected based on the products you're shipping and where you are shipping from. By having your inventory spread across multiple fulfillment centers across the country, customers who buy your product may receive it faster than they would if your inventory was located farther away.

To better spread your products, Amazon may route your shipment through a receive center, which receives units and then reships them to other fulfillment centers in our network. Your products are available for sale as soon as we successfully receive them at any of our receive centers or fulfillment centers. Units that are being reshipped to other fulfillment centers are available for customers to buy, but customers may be shown a future ship date if no other units are available for immediate fulfillment.

You can choose to sign up for the Inventory Placement Service and send all of your eligible inventory to a single receive center or fulfillment center (see the **Inventory placement exceptions** section below). When the shipment arrives, it is split up and sent to different fulfillment centers for you. A per-item service fee applies for the Inventory Placement Service.

When you use the Inventory Placement Service, the destination receive center or fulfillment center is determined by Amazon. You cannot choose the receive center or fulfillment center to which you send your shipment. The destination chosen by Amazon may vary from shipment to shipment.

Inventory placement settings

To change your inventory placement settings:

1. Under **Settings**, click **Fulfillment by Amazon**.
2. Under **Inbound Settings**, click **Edit**.
3. Under **Inventory Placement Option**, click **Inventory Placement Service**.
4. Click **Update**.

Tip: Any in-progress shipments are not affected when you change your inventory placement option. The new setting applies only to shipments created after you update your settings. In order to apply this change to your current shipment, delete the shipping plan and then recreate it after you change your settings. To quickly recreate your shipping plan, in **Shipping Queue**, select **Deleted/canceled**, and then click the shipping plan that you want. On **Send/Replenish Inventory** page, at the bottom left, click **Duplicate**.

Inventory placement exceptions

If you sign up for the Inventory Placement Service, most of your standard-size items will be directed to a single receive center or fulfillment center. However, items in the following categories may be directed to a different receive center or fulfillment center even if you use the Inventory Placement Service:

Apparel
Jewelry

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Shoes
Media
Commingled inventory
Oversize items
Amazon prep required
Amazon labeling required
Hazardous materials

Tip: When you add products to a shipment one at a time from your inventory list, the destination fulfillment center is reevaluated every time. For best results, choose all of the items that you want to include in a shipment at the same time from the Manage Inventory page, and then select **Send/replenish inventory** from the **Actions** on menu.

Inventory Placement Service fees

Standard size (per item)

1 lb or less	\$0.30
1-2 lb	\$0.40
Over 2 lb	\$0.40 + \$0.10/lb above the first 2 lb

Oversize (per item)

5 lb or less	\$1.30
Over 5 lb	\$1.30 + \$0.20/lb above the first 5 lb

Note: The weight used to calculate the per-item fee is the dimensional weight or unit weight (whichever is greater) for large standard-size non-media items weighing more than 1 lb and for all small, medium, and large oversize units. The unit weight is the weight of an individual item. The dimensional weight is the volume (based on length * width * height in inches) divided by 166.

Your participation in this service is subject to the [Inventory Placement Service Terms and Conditions](#).

Case-packed products

Case packs refer to individually sellable units that are packaged together. To create a shipment based on case packs, choose **Case-packed products** under **Packing type** during the initial shipment creation step. You will then be able to enter the number of cases and units per case for each SKU in the shipment.

Note: FBA supports two packing types: 1) Individual Products and 2) Case-packed products. Select **Individual products** if your shipment consist of individual items with different SKUs and in different conditions. Select **Case-packed products** if your shipment consist of cases previously packaged by the manufacturer that contain identical items with matching SKUs in the same condition. Each case must contain the same number of items.

Amazon's placement system will generally respect case packs and not require you to break a case pack into separate shipments.

Note the following rules for case-packed products:

- All products in a box will have a matching SKU and condition and will have been previously packaged together by the manufacturer.

- All boxes with the same product will contain equal quantities of that product in each box. For example, a case pack of 24 units must always contain 24 units.

- The case pack limit is 150 units per case.

- While receiving this type of shipment, the fulfillment center scans one unit from the box and the box is placed in inventory.

- There is no need to scan every unit because they are all the same.

- In some cases, a manufacturer or distributor may package more than one case-pack into a larger box called a master carton.

- Master cartons do not qualify as a case-pack and must be split at the appropriate case-pack level.

Important: When sending individually sellable units in a case pack, you must remove or cover any scannable barcode on the case itself. Only the individual items inside the case should have scannable barcodes.

Note: A case pack is not the same as a multi-pack. Case packs are intended to be split and the contents sold individually. Multi-packs are sold as bundles or sets. A case pack may be sold as a multi-pack, but must be prepped according to the requirement for products sold as a set.

Prepare product images

Every product on Amazon needs one or more product images. The primary image of your product is called the "MAIN." The MAIN image represents a product in the search results and browse pages, and is the first image customers see on a product detail page. Remember, the images you choose to upload for your product will impact customer buying choices, and so quality matters. Choose images that are clear, easy to understand, information-rich, and attractively presented.

Add an image

There are several ways to add a product image to Amazon:

- Use the Add a Product tool to add an image when you create a new listing.

- Use the Manage Inventory tool to add an image to an existing listing.

- If you use inventory files, specify the product image URL in the inventory file.

Are you having problems uploading images? If you are seeing an "Invalid URL format" error" or if you face any other URL issues, you can search for "image error" in Help for common image-related errors and find more information.

Note: Uploading an image doesn't guarantee that it will be displayed on the product detail page or search pages. Amazon uses complex image ranking technology to determine the best images to display. Follow the guidelines provided in the Product image requirements Help page to increase the chances.

Image standards

Images must accurately represent the product and show only the product that's for sale with minimal or no propping.

MAIN images must have a pure white background (pure white blends in with the Amazon search and product detail pages—RGB color values of 255, 255, 255).

MAIN images must show the actual product (not a graphic or an illustration), and must not show excluded accessories, props that may confuse the customer, or text that is not part of the product. It must also not contain logos, watermarks or inset images.

The product must fill at least 85% of the image area.

Images should be 1,000 pixels or larger in either height or width. This minimum size requirement enables the zoom function on the website. Zoom has been proven to enhance sales. The smallest your file can be is 500 pixels on its longest side.

The product must not be on a mannequin.

Product must have good depth of field, meaning the image is completely in focus.

Product must be clearly visible in the image (for example, if the product is on a model, the model should not be sitting).

Image must not contain nudity.

Image must contain only the product; no extra props are allowed.

Image must not contain a model unless the product is apparel or an apparel accessory worn by a model.

Add secondary images

MAIN images can be supplemented with additional images showing different sides of a product, the product in use, or details that aren't visible on the MAIN image. Follow the image standards listed above to maintain the quality and consistency across all your product images.

Note: We reserve the right to remove images that do not meet our image standards. Refer to the [Product image requirements](#) Help page for examples of MAIN images. You must always ensure that you have the necessary rights for the images you submit. Our servers do not support animated GIF (.gif) file format.

Remove inventory (overview)

You can remove inventory from a fulfillment center by submitting a removal order. Use one or more of the following options to remove your inventory:

Request the return, disposal, or liquidation of any amount of inventory at any time. See [Remove inventory from fulfillment centers](#).

Manage unsellable and slow-moving inventory automatically. See [Remove inventory automatically](#).

Use spreadsheets to submit bulk removal orders. See [Remove inventory in bulk](#).

A per-item fee applies. See [FBA removal order fees](#).

Removal order process

We process removal orders in 10-14 business days. During the holiday season and peak removal periods, processing may take 30 days or more.

Fulfillable inventory is available for purchase until we remove it. If you don't want it available for sale, close your listing. See [Close a listing in List products for Fulfillment by Amazon](#).

We cannot remove inventory in the following cases:

It is already scheduled for removal.

It is being processed for a pending customer order.

It is being shipped to another fulfillment center.

Note: When creating a removal order, you may notice that certain items cannot be removed. We will notify you with suggested action to take in order to successfully remove your inventory.

Removal order restrictions

We ship returns only to you, your warehouse, your supplier, or your distributor. In addition, the following restrictions apply:

Inventory cannot be shipped outside of the 48 continental United States or to PO, APO, FPO, or DPO boxes. To ship to an address outside of the United States, see [International return providers](#).

Note: This also applies if you have a Unified Account.

Inventory cannot be shipped to another fulfillment center.

Inventory cannot be used to send customer orders, gifts, or promotional items.

Inventory classified as non-transportable dangerous goods can only be disposed of.

Removal order packing and shipping

If your inventory is located in different fulfillment centers, your order may arrive in multiple boxes from different carriers.

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We return case-packed inventory as individual items.

Canceled removal orders

We may cancel a removal order once it is submitted, if the inventory isn't available for removal. For example, it may be part of a pending customer order.

If we cancel a removal order, submit another request. If we cancel the second request, contact [Seller Support](#).

If you want to cancel a removal order that you submitted, see [Remove inventory from a fulfillment center](#).

Remove inventory (overview)

- [Remove inventory from a fulfillment center](#)
- [Remove inventory automatically](#)
- [Remove inventory in bulk](#)
- [Required removals](#)

Seller Best Practices

Whether you're a low- or high-volume seller, Amazon.com wants you to succeed. It's important that you are able to focus on growing your business and not have to worry about the mechanics of selling. In light of this, we've created these useful insights for you that are used by our most successful sellers. For easy reference, bookmark this page and the links below.

If you are a Professional seller, you have access to volume listing tools, frequent-seller programs, subscription selling rates, downloadable inventory reports, and many other features. When relevant, we've highlighted additional information for you.

If you're serious about selling, we're serious about helping you.

- [Finding Answers Quickly](#)
- [Listing Items and Inventory Management](#)
- [Order Management](#)
- [Fulfillment](#)
- [Customer Service](#)
- [Security](#)
- [Community](#)

Finding Answers Quickly

- The quickest way to find answers is to read our Help pages and FAQs, available in our [Seller Help pages](#).
- Always check the [Seller Announcement Board](#) before contacting Amazon about a current technical issue--this is where our support staff will post notices of any known issues.
- Interact with other sellers and find out why they're so successful. Become an active member of our seller community by visiting our discussion boards such as the [Help for New Sellers](#) board.

Listing Items and Inventory Management

- Update your online inventory daily to avoid stock-outs that may occur when an Amazon buyer purchases an item from you, but you no longer have that item on hand. Making updates is especially important if the inventory you are selling on Amazon Marketplace is also for sale through other venues.
- Before pricing your items, research prices for comparable products on Amazon Marketplace and make adjustments if necessary.
- If an item has been listed for more than 30 days and has not sold, check your pricing to make sure that it is competitive and make changes if necessary.
- The Listings Status feature may take up to 36 hours to remove your listings and another 36 hours to restore them. During this period, listings cannot be modified or deleted. Because of this, we don't suggest using this feature to remove your listings from the site. Read more about using this feature by visiting the [Seller Account and Preferences](#) help page.
- Ensure that you classify the condition of your items in accordance with our posted [Condition Guidelines](#).
- For more information about listing on our site, please visit our collection of Help pages for [Listing Your Item](#).
- For information about inventory management, visit our page for [Managing and Relisting Your Items](#) or our related [FAQ](#).

Additional Information for Professional Sellers

- Break large Inventory Loader files into batches with fewer than 25,000 listings or file sizes smaller than 10 MB.
- It is best not to submit the same Inventory Loader file more than once. You might experience a slight processing delay during peak times, but our systems will still process files in the order we received them.

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- After your file finishes processing, be sure to review the error log to determine why some of your listings may not have loaded. [Click here](#) for more information.
- For more information about how to use Inventory Loader, please visit our page on [Volume Listing Tools](#).

Order Management

- Check your Manage Your Orders section regularly for important updates on your sales, rather than relying exclusively on e-mail notifications. You can access order information through your [Seller Account](#).
- Provide high-quality customer service, which includes handling refunds and returns in a timely manner. Cancel an order within 48 hours if you are unable to fulfill it, and issue refunds for returns within five business days of receiving the return. You'll find instructions on our [Charge When Ship FAQ](#) and [Refund Orders](#) pages.
- Use the A-to-z Guarantee only as a **last resort** when resolving matters with buyers. Multiple guarantee claims are an indication of seller performance problems.

Fulfillment

- Always ship your items within two business days of order notification. This is a requirement!
- Include a packing slip with your item. You can print it from your [Seller Account](#) or create your own. Don't forget to include your return address. Please also review our [shipping and packing guidelines](#) carefully.
- To understand shipping rates, visit our [Shipping Resources](#) page.
- Include a note with your package with your contact information and encourage your buyer to leave you feedback at www.amazon.com/feedback.
- Though we handle order and shipping notifications, we encourage you to work directly with customers to resolve their questions and concerns about products and orders.
- For additional help with this topic, visit our Help pages for [Fulfillment](#), [Getting Paid](#), and [Feedback](#).

Additional Information about A-to-z Guarantee Claims for Items Not Received

Sellers are accountable for resolving A-to-z Guarantee claims for items Not Received and the claims will be processed according to the following policies:

- **Products(s) Shipped without Tracking**
A seller will be liable for a not received claim if Estimated Delivery Date (EDD) has passed and the order was shipped without tracking information. This policy will apply to all orders, including those shipped by media mail.
- **Product(s) Shipped with Tracking - In Transit**
If a product is not delivered by the end of the EDD range, and tracking information shows an expected delivery in the near future (and the product was shipped by the promised ship date of two business days from the order date) the claim will not be granted and the buyer will be asked to wait for the product. The seller will not be liable. However, if tracking information does not show expected delivery in a reasonable timeframe, the claim will be granted and the seller will be held liable. This will apply to packages lost in transit as well.
- **Product(s) Shipped with Delivery Confirmation Tracking - Tracking Shows Delivery and Buyer Claims Item Not Received**
The A-to-z Guarantee team will investigate the dispute. Amazon may contact the buyer to confirm non-receipt. If no receipt is confirmed, the seller may still be held liable for lack of fulfillment - Amazon will not cover service errors, including loss, theft, or postal/shipping issues. Amazon will, however, continue to protect sellers from fraudulent buyers and A-to-z Guarantee abusers.
- **Product(s) Shipped with Signature Confirmation Tracking - Tracking Shows Delivery and Buyer Claims Item Not Received**
If the name on the signature confirmation matches the buyer, the A-to-z Guarantee team will deny the claim. If signature confirmation does not match the buyer, the A-to-z Guarantee team will deny the claim and ask the buyer to follow-up with the individual that signed for the package. Guarantee claims for packages that are signed for by a freight forwarder or an agent of the buyer (e.g. receptionist, family member) will be denied. However, if an investigation determines that the customer did not

receive the order due to a shipping error beyond his or her control, the seller may be held liable. We anticipate that this would be a very rare occurrence.

How sellers can reduce the risk of an A-to-z Guarantee claim

There are three simple ways to mitigate the risk of an A-to-z Guarantee claim for item not received:

1. Ship promptly and use a shipping method that ensures reliable delivery before EDD.
2. Ship with a trackable method, and provide tracking information when confirming orders.
3. Ship higher priced items with signature confirmation tracking and/or insurance.

You can review the pertinent section your agreement with us for additional details.

Additional Information for Professional Sellers

- Professional sellers can [schedule Order Fulfillment Reports](#) to run on a regular basis. We recommend that you schedule these reports no more than once per day. The reports generated by this URL contain data for the most recent 24-hour period.
- You can manually generate a report for 15, 30, or 60 days via your [Seller Account](#) if needed.

Customer Service

- Answer all buyer inquiries within 24 hours of receipt. Good communication with buyers promotes good feedback for sellers.
- Amazon.com was founded on providing an extraordinary experience for buyers. Customers have come to expect this type of service, and that is what keeps them coming back for more purchases. We encourage you to use the reputation we've established to leverage your own business. As a seller, you are now in control of the same experience for your buyers: never lose sight of this philosophy.

Security

- Change your password regularly. Don't use the same password that you use for other online accounts.
- Set up [Two-Step Verification](#) for all of your Amazon accounts.
- Consider setting up a separate bank account for disbursements.
- Amazon.com never asks you to verify sensitive information via e-mail. Submit such information only when completing an order on our website, registering to sell on Amazon, updating account information in Seller Central, or contacting us directly through our [online forms](#).
- Review the terms of our online [Privacy Notice](#) and our other [Privacy & Security](#) resources.
- If you are ever in doubt about the authenticity of an e-mail, visit our site directly by typing the address into your browser bar, rather than clicking any links. To find out more about Amazon.com's efforts to combat fraudulent e-mail, please visit our [Stop Spoofing](#) page.

Community

Familiarize yourself with the [Community Rules](#) for sellers and the terms of our Business Solutions Agreement.

After a customer finds your product, present them a compelling offer. Quality images and effective product details entice customers to buy your products.

- **Clear, high-quality images:** Is the image clear, on a white background, and a good representation of the product you are selling?
- **Great product details and descriptions** Does the customer have the information they need to confidently buy from you?
- **Effective merchandising:** Do your items show up in the appropriate areas of the store based on the information you provided?
- **Pricing and shipping:** Are your products priced competitively against comparable pieces? If they are unique, collectors, or designer items, does the customer have enough information to justify the price? Can you offer shipping incentives to sweeten the deal?

Follow up with great customer service, an excellent buying experience, and (as a result) great feedback ratings for you as a seller.

Images

Effective product images stimulate a customer's imagination and inspire them to buy your product. Evaluate your image quality based on these guidelines:

- The image matches the product description in size, color, and so on.
- The product is recognizable
- The image is a photo and not a drawing
- The photo is taken at a flattering angle.
- The product is focused and well-lit.
- Close-up shots are not obscured by highlights or shadows.
- The product occupies at least 80% of the image area
- The entire product is depicted in the image
- Backgrounds are simple and clean so as not to distract from the product.

Product Titles and Brand Names

Consider these title and branding guidelines when creating your listings:

- Your product title should entice customers to buy your products.
- Do not use ALL CAPS. Customers are wary of products and pages that appear to be shouting at them.
- Use title case for product titles and brand names. For example, Men's White Silk Shirt for that "Uptown Party" Look.
- Product titles should contain only relevant information specific to the item. Shipping, promotional information, or seller name should not be included in the product title.
- If the item is a designer item, the designer name goes in the Brand field. If it is an unbranded item, like most jewelry, the seller name goes in the brand field.
- Brand names should be entered according to the manufacturer's standard format (for example, TAG Heuer, Seiko, Rolex, or Movado).

Product Feature Bullets

Testing shows that well-crafted bullet points increase sales. Customers rely on them to understand key product features as they highlight important or distinguishing facts about your product.

Use the following guidelines as you craft your bullet points:

- Highlight the key features you want customers to consider, such as dimensions, age appropriateness, ideal conditions for the product, skill level, contents, country of origin, and so on.
- Maintain a consistent order. If your first bullet point is country of origin, keep that same order for all your products.
- Reiterate important information from the title and description.
- Begin each bullet point with a capital letter.
- Write with sentence fragments and do not include ending punctuation.
- Do not include promotional and pricing information.

The bulleted list below follows these guidelines in describing a set of rain gear:

- Made in USA
- 100% waterproof
- 100% breathable
- Available in khaki, yellow, or green
- Money-back satisfaction guarantee

Product Descriptions

As you describe your product, you might want to include some key features listed in your bullet points. Well-written product descriptions help the customer imagine the experience of owning or handling your product.

Put yourself in your customers' shoes: what do they want to feel, touch, think? How will their lifestyle be enhanced by your product? Incorporating information about the feel, usage, and benefits of your product can fire the customer's imagination. This is as close as you can come to creating an in-store experience.

Avoid overly simplistic descriptions, such as these:

A rugged microphone for sound professionals.

Washable canvas pants with faux suede trim on the back.

Instead, consider these solid, compelling descriptions:

In the tradition of the SM58®, the Beta 58A dynamic microphone has become a top choice among vocalists and touring sound professionals. The Shure Beta 58A is a high-output supercardioid dynamic vocal microphone designed for professional sound reinforcement and project studio recording. It maintains a true supercardioid pattern throughout its frequency range. This insures high gain-before-feedback, maximum isolation from other sound sources, and minimum off-axis tone coloration. The Beta 58A has a shaped frequency response that is ideal for close-up vocals. The superb performance of this microphone is not affected by rough handling, because of rugged construction, proven shock mount system, and hardened steel mesh grille help protect it from damage. Typical applications for the Beta 58A include lead vocals, backup vocals, and speech.

Cut for active wear, these pure cotton canvas pants might be the most durable and comfortable trousers you'll ever wear. Washable faux suede trim on back pockets and D-ring add durability and extended wear. Available in brown, green, khaki, or stone. Washable. Imported.

Pricing and Shipping

Research the competition as you develop a compelling price point. Do not forget to take shipping costs into account as well. Customers consistently see shipping costs as the main issue when deciding to make an online purchase.

Offering free shipping can significantly increase your sales. In particular, think about inexpensive items. A \$5 shipping charge on \$5 to \$10 worth of merchandises not very compelling.

Clearly communicate your shipping policy. This includes both charges and delivery times. Use the "Your Info & Policies" feature to add to the information you provide in your "Shipping Settings."

Protected Information Subject to Protective Order
Amazon Services LLC v South Carolina Department of Revenue
Docket No. 17-ALJ-17-0238-CC

Subject: Your Amazon.com order of "OXO Good Grips 8-Piece Clip..."

From: auto-confirm@amazon.com (auto-confirm@amazon.com)

To: [REDACTED]

Date: Wednesday, February 10, 2016 10:35 AM



Order Confirmation

Hello [REDACTED]

Thank you for shopping with us. You ordered "OXO Good Grips 8-Piece Clip...", We'll send a confirmation when your item ships.

Details

Order #002-5481459-6061859

Arriving:
Friday, February 12

Ship to:



[View or manage order](#)

Total Before Tax: \$9.99
Estimated Tax: \$0.96
Order Total: \$10.95

We hope to see you again soon.
Amazon.com

Customers Who Bought Items in Your Order Also Bought



OXO Good Grips Bag
Clip -2 Pack
\$5.99



Oxo Good Grips
Magnetic Mini Clips...
\$6.99

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Hearing
Exhibit
122

AS0115611

APP_00965

ROA_00947

Protected Information Subject to Protective Order
Amazon Services LLC v South Carolina Department of Revenue
Docket No. 17-ALJ-17-0238-CC

Subject: Your Amazon.com order of "OXO Good Grips 8-Piece Clip..." has shipped!

From: Amazon.com (ship-confirm@amazon.com)

To: [REDACTED];

Date: Wednesday, February 10, 2016 2:14 PM



Shipping Confirmation

Hello [REDACTED]
"OXO Good Grips 8-Piece Clip..." has shipped.

Details

Order #002-5481459-6061859

Arriving:
Thursday, February 11

Shipped to:



[Track your package](#)

Total Before Tax: \$9.99
Tax Collected: \$0.96
Shipment Total: \$10.95

[Order details](#)

Return or replace your items in [Your Orders](#).

We hope to see you again soon.
Amazon.com

Customers Who Bought OXO Good Grips 8-Piece Clip... Also Bought



OXO Good Grips Bag
Clip -2 Pack
\$5.99



Oxo Good Grips
Magnetic Mini Clips...
\$6.99

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Your invoice can be accessed [here](#).

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AS0115612

APP_00966

ROA_00948



Final Details for Order #002-5481459-6061859

[Print this page for your records.](#)

Order Placed: February 10, 2016

Amazon.com order number: 002-5481459-6061859

Order Total: \$10.95

Shipped on February 10, 2016	
Items Ordered	Price
1 of: <i>OXO Good Grips 8-Piece Clip Set</i>	\$9.99
Sold by: Amazon.com Services, Inc.	
Condition: New	
Shipping Address:	Item(s) Subtotal: \$9.99
[REDACTED]	Shipping & Handling: \$0.00
SEATTLE, WA 98109-1902	-----
United States	Total before tax: \$9.99
	Sales Tax: \$0.96

Shipping Speed:	Total for This Shipment: \$10.95
Two-Day Shipping	-----

Payment information	
Payment Method:	Item(s) Subtotal: \$9.99
Visa Last digits: 3290	Shipping & Handling: \$0.00

Billing address	Total before tax: \$9.99
[REDACTED]	Estimated tax to be collected: \$0.96
SEATTLE, WA 98109-1902	-----
United States	Grand Total: \$10.95
Credit Card transactions	Visa ending in 3290: February 10, 2016: \$10.95

To view the status of your order, return to [Order Summary](#).

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Amazon Services LLC v South Carolina Department of Revenue
Docket No. 17-ALJ-17-0238-CC

ROA_00949

AS0115613

APP_00967

Protected Information Subject to Protective Order
Amazon Services LLC v South Carolina Department of Revenue
Docket No. 17-ALJ-17-0238-CC

Subject: Your Amazon.com order of "Sienoc Active Mini..."
From: auto-confirm@amazon.com (auto-confirm@amazon.com)
To: [REDACTED]
Date: Sunday, March 27, 2016 5:07 PM



Order Confirmation

Hello [REDACTED]

Thank you for shopping with us. You ordered "Sienoc Active Mini..." We'll send a confirmation when your item ships.

Details

Order #106-5705873-7960260

Arriving:
Tuesday, March 29

Ship to:



[View or manage order](#)

Total Before Tax: \$11.90
Estimated Tax: \$0.00
Order Total: \$11.90

We hope to see you again soon.
[Amazon.com](#)

Customers Who Bought Items in Your Order Also Bought



Microsoft Surface Dock
\$148.66



Cable Matters Active Mini...
\$19.99

The payment for your invoice is processed by Amazon Payments, Inc. P.O. Box 81226 Seattle, Washington 98108-1226. If you need more information, please contact (866) 216-1075.

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AS0115614

APP_00968

ROA_00950

Protected Information Subject to Protective Order
Amazon Services LLC v South Carolina Department of Revenue
Docket No. 17-ALJ-17-0238-CC

Subject: Your Amazon.com order of "Sienoc Active Mini..." has shipped!

From: Amazon.com (ship-confirm@amazon.com)

To: [REDACTED]

Date: Sunday, March 27, 2016 10:49 PM



Shipping Confirmation

Hello [REDACTED]
"Sienoc Active Mini..." has shipped.

Details

Order #106-5705873-7960260

Arriving:
Tuesday, March 29

Shipped to:



[Track your package](#)

Total Before Tax: \$11.90
Shipment Total: \$11.90

[Order details](#)

We hope to see you again soon.
Amazon.com

Bargain Recommendations



Cable Matters Mini
DisplayPort to...
\$10.99



Cable Matters Gold-
Plated Mini...
\$7.99

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AS0115615

APP_00969

ROA_00951



Final Details for Order #106-5705873-7960260

[Print this page for your records.](#)

Order Placed: March 27, 2016

Amazon.com order number: 106-5705873-7960260

Order Total: \$11.90

Shipped on March 27, 2016	
Items Ordered	Price
1 of: <i>Sienoc Active Mini DisplayPort DP to DVI Male to Female Adapter - Support 4K 1080P, ATI AMD Eyefinity Compatible</i>	\$11.90
Sold by: Sienoc (seller profile) Product question? Ask Seller	
Condition: New	
Shipping Address: [REDACTED] SEATTLE, WA 98109-1902 United States	Item(s) Subtotal: \$11.90 Shipping & Handling: \$0.00 ----- Total before tax: \$11.90 Sales Tax: \$0.00 -----
Shipping Speed: Two-Day Shipping	Total for This Shipment: \$11.90 -----

Payment information	
Payment Method: Visa Last digits: 3290	Item(s) Subtotal: \$11.90 Shipping & Handling: \$0.00 -----
Billing address [REDACTED] SEATTLE, WA 98109-1902 United States	Total before tax: \$11.90 Estimated tax to be collected: \$0.00 -----
	Grand Total: \$11.90
Credit Card transactions	Visa ending in 3290: March 27, 2016: \$11.90

To view the status of your order, return to [Order Summary](#).

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Amazon Services LLC v South Carolina Department of Revenue
Docket No. 17-ALJ-17-0238-CC

ROA_00952

AS0115616

APP_00970

Transaction Details

Use this page to view details of this transaction.

Order Payment for Order 106-5705873-7960260 (view details of this order)

Transaction date: Mar 27, 2016

Shipping Address:-
[REDACTED]
SEATTLE, WA 98109-1902

Billing Country
US

Product charges		
Sienoc Active Mini DisplayPort DP to DVI Male to Female Adapter - Support 4K 1080P, ATI AMD Eyefinity Compatible	Qty: 1	\$11.90
Sales Proceeds		\$11.90
Amazon fees		
FBA Order Handling Fee:		-\$1.00
FBA Pick & Pack Fee:		-\$1.06
FBA Weight Handling Fee:		-\$0.50
Referral Fee on Item Price:		-\$1.00
Change to your seller account balance		\$8.34

[Return to View Transactions](#)

ROA_00953

AS0115617

APP_00971

Protected Information Subject to Protective Order
Amazon Services LLC v South Carolina Department of Revenue
Docket No. 17-ALJ-17-0238-CC

Your Amazon.com order - [REDACTED]

Page 1 of 2

Your Amazon.com order

auto-confirm@amazon.com

Fri 1/8/2016 9:41 PM

To [REDACTED]



Order Confirmation

Hello [REDACTED],

Thank you for shopping with us. You ordered 3 of "ScarAway C-Section Scar..." and 1 other item. We'll send a confirmation when your items ship.

Your purchase has been divided into 2 orders.

Order 1 of 2

Order #112-5606708-6555442

Arriving:
Thursday, January 14 -
Wednesday, January 20

[View or manage order](#)

Ship to:

Total Before Tax: \$62.40
Estimated Tax: \$0.00
Order Total: \$62.40

Order 2 of 2

Order #112-8876544-0326601

Arriving:
Thursday, January 14 -
Saturday, January 16

[View or manage order](#)

Ship to:

Total Before Tax: \$9.99
Estimated Tax: \$0.95
Order Total: \$10.94

<https://outlook.live.com/owa/?ItemID=AQMkADAwATE0OTUwLTVhYjMtMmE3OS0w...> 2/24/2018

AS0115618

APP_00972

ROA_00954

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Amazon Services LLC v South Carolina Department of Revenue
Docket No. 17-ALJ-17-0238-CC

Your Amazon.com order - [REDACTED]

Page 2 of 2

We hope to see you again soon.
Amazon.com

Recommendations for Items from Across Our Store



1 Gallon Bottle
Dispensing Pump...
\$5.45



Top Performance Plastic
Pet Gallon...
\$4.71

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Docket No. 17-ALJ-17-0238-CC

Your Amazon.com order has shipped (#112-5606708-6555442) - [REDACTED]

Page 1 of 2

Your Amazon.com order has shipped (#112-5606708-6555442)

Amazon.com <ship-confirm@amazon.com>

Mon, 1/11/2016 4:53 AM

To: [REDACTED]



Shipping Confirmation

Hello [REDACTED],

3 "ScarAway C-Section Scar..." have shipped.

Details

Order #112-5606708-6555442

Arriving:
Thursday, January 14 -
Wednesday, January 20

Shipped to:

[REDACTED]

[Track your package](#)

Total Before Tax: \$62.40
Shipment Total: \$62.40

[Order details](#)

We hope to see you again soon.
Amazon.com

Buy It Again



Cetaphil Baby Ultra
Moisturizing...
\$5.99



Cetaphil Baby Daily
Lotion with...
\$8.49

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Your invoice can be accessed [here](#).

<https://outlook.live.com/owa/?ItemID=AQMkADAwATE0OTUwLTVhYjMtMmE3OS0w...> 2/24/2018

AS0115620

APP_00974

ROA_00956

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Docket No. 17-ALJ-17-0238-CC**

Your Amazon.com order has shipped (#112-5606708-6555442) - [REDACTED]

Page 2 of 2

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AS0115621

APP_00975

ROA_00957

amazon.com

Final Details for Order #112-5606708-6555442
[Print this page for your records.](#)

Order Placed: January 8, 2016
Amazon.com order number: 112-5606708-6555442
Order Total: \$62.40

Shipped on January 11, 2016	
Items Ordered 3 of: ScarAway C-Section Scar Treatment Strips, Silicone Adhesive Soft Fabric 4-Sheets (7 X 1.5 Inch) Sold by: Sunset Health & Beauty (seller profile) Condition: New	Price \$20.00
Shipping Address: [REDACTED] Bothell, WA 98021 United States	Item(s) Subtotal: \$62.40 Shipping & Handling: \$0.00 ----- Total before tax: \$62.40 Sales Tax: \$0.00 -----
Shipping Speed: Standard	Total for This Shipment: \$62.40 -----

Payment information	
Payment Method: Visa Last digits: 2347	Item(s) Subtotal: \$62.40 Shipping & Handling: \$0.00 -----
Billing address [REDACTED] Bothell, WA 98021 United States	Total before tax: \$62.40 Estimated tax to be collected: \$0.00 -----
Credit Card transactions	Grand Total: \$62.40 -----

Visa ending in 2347: January 11, 2016: \$62.40

To view the status of your order, return to [Order Summary](#).

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APP_00976

ROA_00958

AS0115622

Transaction Details

Use this page to view details of this transaction.

Order Payment for Order 112-5606708-6555442 ([view details of this order](#))

Transaction date: Jan 11, 2016

Shipping Address:-
[Redacted]
Bothell, WA 98021

Billing Country
US

Product charges		
ScarAway C-Section Scar Treatment Strips, Silicone Adhesive Soft Fabric 4-Sheets (7 X 1.5 Inch)	Qty: 3	\$62.40
Sales Proceeds		\$62.40
Amazon fees		
Referral Fee on Item Price:		-59.36
Change to your seller account balance		\$53.04

[Return to View Transactions](#)

ROA_00959

AS0115623

APP_00977

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Docket No. 17-ALJ-17-0238-CC

Receipt for shipment

<https://central.amazon.com/gp/stores/www.amazon.com/gp/order/ship...>



Billing Address:

[REDACTED]
SHAW AFB, SC 29152-5071
United States
Delivery Instructions:

Shipping Address:

[REDACTED]
Greenville, SC 29613
United States
Delivery Instructions:

Your order of Tuesday, January 12, 2016 (Order number: 002-0242252-3401021)

Shipment date Wednesday, January 13, 2016

**Receipt number
DPCDTYYb**

Qty.	Item	Description	Our Price	Tax Rate	Sold By	Total
IN THIS SHIPMENT						
1	Feeling Good: The New Mood Therapy David D. Burns	Mass Market Paperback	\$6.00	6.00%	Amazon.com	\$6.00
Subtotal						\$6.00
Shipping						\$0.00
Gift wrap						\$0.00
Promotional Certificate						\$0.00
Tax						\$0.36
Shipment total						\$6.36

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Amazon Services LLC v South Carolina Department of Revenue
Docket No. 17-ALJ-17-0238-CC

Receipt for shipment

<https://cscentral.amazon.com/gp/stores/www.amazon.com/gp/order/ship...>



Billing Address:



Edisto Island, SC 29438
United States
Delivery Instructions:

Shipping Address:



Edisto Island, SC 29438
United States
Delivery Instructions:

Your order of Wednesday, March 2, 2016 (Order number: 108-2009284-9529058)

Shipment date Thursday, March 3, 2016

**Receipt number
DpLHpBvBb**

Qty.	Item	Description	Our Price	Tax Rate	Sold By	Total
IN THIS SHIPMENT						
1	Celestial Seasonings Sleepytime Herbal Tea Keurig K-Cups, 24 Count	Misc.	\$18.19	0.00%	Deals On Call	\$18.19
Subtotal						\$18.19
Shipping						\$6.83
Gift wrap						\$0.00
Promotional Certificate						\$0.00
Tax						\$0.00
Shipment total						\$25.02

Order Payment for Order 108-2009284-9529058 ([view details of this order](#))

Transaction date: Mar 3, 2016

Shipping Address: 

Edisto Island, SC 29438

Billing Country

US

Product charges

Celestial Seasonings Sleepytime Herbal Tea Keurig K-Cups, 24 Count	Qty: 1	\$18.19

Other

Shipping:	\$6.83

Sales Proceeds	\$25.02

Amazon fees

FBA Order Handling Fee:	-\$1.00

FBA Pick & Pack Fee:	-\$1.06

FBA Weight Handling Fee:	-\$0.96

Referral Fee on Item Price:	-\$2.73

Shipping Chargeback:	-\$6.83

Change to your seller account balance	\$12.44

[Return to View Transactions](#)

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Amazon Services LLC v South Carolina Department of Revenue
Docket No. 17-ALJ-17-0238-CC

Receipt for shipment

<https://central.amazon.com/gp/stores/www.amazon.com/gp/order/ship...>



Billing Address:



simpsonville, South Carolina 29681
United States
Delivery Instructions:

Shipping Address:



simpsonville, South Carolina
29681
United States
Delivery Instructions:

Your order of Monday, February 1, 2016 (Order number: 108-3172067-6684232)

Shipment date Monday, February 1, 2016

**Receipt number
D797qX7rN**

Qty.	Item	Description	Our Price	Tax Rate	Sold By	Total
IN THIS SHIPMENT						
1	Nintendo Wii U 32GB Console Splatoon Special Edition Bundle - Black	Video Game	\$299.00	0.00%	GAMEZLAND	\$299.00
Subtotal						\$299.00
Shipping						\$8.74
Gift wrap						\$0.00
Promotional Certificate						\$0.00
Tax						\$0.00
Shipment total						\$307.74

Transaction Details

Use this page to view details of this transaction.

Order Payment for Order 108-3172067-6684232 ([view details of this order](#))

Transaction date: Feb 1, 2016

Shipping Address: 

simpsonville, South Carolina 29681

Billing Country

US

Product charges

Nintendo Wii U 32GB Console Splatoon Special Edition Bundle - Black

Qty: 1

\$299.00

Other

Shipping:

\$8.74

Sales Proceeds

\$307.74

Amazon fees

Closing fee:

~~-\$1.35~~

Referral Fee on Item Price:

~~-\$23.92~~

ROA_00964

AS0115628

APP_00982

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[Statement View](#) **[Transaction View](#)** [All Statements](#) [Date Range Reports](#)

Find a transaction: (80)

Order Id search: (80)
or [Filter the list of all transactions](#)

102-1134859-2933048 [Download](#)

Items 1 to 1

Date ▾	Transaction type	Order ID	Product Details	Total product charges	Total promotional rebates	Amazon fees	Other	Total
Feb 25, 2016	Order Payment	102-1134859-2933048	Comfy Clothiers 5 Metal Collar Extenders...	\$11.95	\$0.00	-\$4.37	\$0.84	\$8.42

Items 1 to 1

Show results per page (80)

ROA_00965

AS0115629

APP_00983

Transaction Details

Use this page to view details of this transaction.

Order Payment for Order 102-1134859-2933648 ([view details of this order](#))

Transaction date: Feb 25, 2016

Shipping Address: 

FORT MILL, SOUTH CAROLINA 29708-8433

Billing Country

US

Product charges

Comfy Clothiers 5 Metal Collar Extenders for Dress Shirts

Qty: 1

\$11.95

Other

Product Tax:

\$0.84

Sales Proceeds

\$12.79

Amazon fees

FBA Order Handling Fee:

-\$1.00

FBA Pick & Pack Fee:

-\$1.06

FBA Weight Handling Fee:

-\$0.50

Referral Fee on Item Price:

-\$1.79

Sales Tax Service Fee:

-\$0.02

Change to your seller account balance

\$8.42

[Return to View Transactions](#)

ROA_00966

AS0115630

APP_00984

Payments from: Amazon Payments Inc. Amazon Services LLC [See](#) [Learn more](#)

Statement View Transaction View All Statements Date Range Reports

Find a transaction:

Filter view by: All transaction types or Search for a transaction

Within: Statement period | Last number of days | Custom date range

From: 2/13/16 To: 2/27/16

Update

Transactions for time period 2/13/16 - 2/27/16

Download

Items 201 to 220

Date	Transaction type	Order ID	Product Details	Total product charges	Total promotional rebates	Previous	Amazon fees	Other	Total
Feb 25, 2016	Order Payment	116-7171952-1635443	Comfy Clothing S Metal Collar Extenders...	\$11.95		\$0.00	-\$4.35	\$0.00	\$7.60
Feb 25, 2016	Order Payment	102-0432463-0655444	Comfy Clothing S Metal Collar Extenders...	\$11.95		\$0.00	-\$4.35	\$0.00	\$7.60
Feb 25, 2016	Order Payment	109-4484113-0322606	Comfy Clothing S Pants Button Extenders...	\$7.95		\$0.00	-\$4.15	\$0.00	\$3.80
Feb 25, 2016	Order Payment	116-6917348-3308217	Comfy Clothing S Metal Collar Extenders...	\$11.95		\$0.00	-\$4.35	\$0.00	\$7.60
Feb 25, 2016	Other	110-5925237-2846039	FBI Inventory Reimbursement	\$0.00		\$0.00	\$0.00	\$2.45	\$2.45
Feb 25, 2016	Order Payment	002-0329611-5156221	Comfy Clothing S Hood & Bar Pants Waist...	\$10.95	-\$1.65		-\$4.23	\$2.62	\$7.65
Feb 25, 2016	Order Payment	113-3184994-5429804	Comfy Clothing S Metal Collar Extenders...	\$11.95	-\$1.00		-\$4.35	\$1.00	\$7.60
Feb 25, 2016	Order Payment	104-9433744-4274606	Comfy Clothing S Hood & Bar Pants Waist...	\$10.95		\$0.00	-\$4.20	\$0.00	\$6.75
Feb 25, 2016	Order Payment	113-9656490-2423038	Comfy Buttons for Jeans 3-pack Denim Was...	\$10.95		\$0.00	-\$4.20	\$0.00	\$6.75
Feb 25, 2016	Order Payment	102-1134859-2933048	Comfy Clothing S Metal Collar Extenders...	\$11.95		\$0.00	-\$4.37	\$0.84	\$8.42
Feb 25, 2016	Order Payment	113-3195754-9552259	Comfy Clothing S Metal Collar Extenders...	\$11.95		\$0.00	-\$4.35	\$0.00	\$7.60
Feb 25, 2016	Order Payment	109-2256025-8040234	Long Metal Short Iron 18" Stainless Steel...	\$15.49		\$0.00	-\$5.34	\$0.00	\$10.15
Feb 25, 2016	Order Payment	109-9485958-0319449	Comfy Clothing S Metal Collar Extenders...	\$11.95		\$0.00	-\$4.35	\$0.00	\$7.60
Feb 25, 2016	Order Payment	105-8636581-6171420	Comfy Buttons for Jeans 3-pack Denim Was...	\$10.95		\$0.00	-\$4.20	\$0.00	\$6.75
Feb 25, 2016	Order Payment	112-3522484-7863865	Comfy Clothing S Metal Collar Extenders...	\$11.95		\$0.00	-\$4.35	\$0.00	\$7.60
Feb 25, 2016	Order Payment	103-1356443-3251419	Comfy Clothing S Metal Collar Extenders...	\$11.95		\$0.00	-\$4.35	\$0.00	\$7.60
Feb 25, 2016	Order Payment	114-5727041-1509028	Comfy Clothing S Metal Collar Extenders...	\$11.95	-\$3.09		-\$4.35	\$3.09	\$7.60
Feb 25, 2016	Order Payment	102-2302506-0673826	Comfy Clothing S Hood & Bar Pants Waist...	\$10.95		\$0.00	-\$4.20	\$0.00	\$6.75
Feb 25, 2016	Order Payment	108-4494977-1513810	Comfy Clothing S Pants Button Extenders...	\$7.95		\$0.00	-\$4.15	\$0.00	\$3.80
Feb 25, 2016	Order Payment	111-6013009-6677807	Comfy Buttons for Jeans 3-pack Denim Was...	\$10.95	-\$9.55		-\$3.58	\$0.00	-\$2.58

Items 201 to 220

Show 20 results per page

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ROA_00967

AS0115631

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Amazon Services LLC v South Carolina Department of Revenue
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Billing Address:

[REDACTED]
FORT MILL, SOUTH CAROLINA 29708-8433
United States
Delivery Instructions:

Shipping Address:

[REDACTED]
FORT MILL, SOUTH
CAROLINA 29708-8433
United States
Delivery Instructions:

Your order of Wednesday, February 24, 2016 (Order number: 102-1134859-2933048)

Shipment date Thursday, February 25, 2016

Receipt number
DX53Khggb

Qty.	Item	Description	Our Price	Tax Rate	Sold By	Total
IN THIS SHIPMENT						
1	Comfy Clothiers 5 Metal Collar Extenders for Dress Shirts	Office Product	\$11.95	7.03%	Market Street Supply	\$11.95
Subtotal						\$11.95
Shipping						\$0.00
Gift wrap						\$0.00
Promotional Certificate						\$0.00
Tax						\$0.84
Shipment total						\$12.79

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Amazon Services LLC v South Carolina Department of Revenue
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Disbursement	Settlement Group	Account Group	Marketplace Amount	Disbursement Amount	Disbursement Date (UTC)	Status	Instrument	Trace ID	
6060083501	SEALS	PCES	6060083501	5093618461	8875.86 USD USD	8875.86 USD 2016-02-28 13:34:59	Succeeded (SUCCESSFUL - 825)	0h_PU_CUS_1e067f11-5cdc-4319-9274-942ee3854241 (Bank Account)	091000014200632

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Search By



Customer ID

Transaction ID

Search

Transaction Level Data				Version 9
Customer Id	14404816715	Requester Id	CAM-1	
Transaction Id	0000083501	Transaction Tag	000000000000003501	
FAR Tag	Not present!	Account Routing Id	1-232-232	
Plan Id	0060083501			

Operations Summary										
Operation Type	Operation Id			Amount Requested		Amount Approved	Create Date	Complete Date	Status Code	
Disburse	CAMoSEALS.DI.USAmazon.sgID=6060083501			\$8,875.86 [USD]		\$8,875.86 [USD]	2016-02-28T14:16:23.676Z	2016-02-28T20:00:19.010Z	APPROVED	
	Execution Type	Payment Method (Index)	Payment Processor Id	Amount Requested	Amount Approved	Create Date	Complete Date	Signature	Result	Detailed Result
	DISBURSE (REAL)	BankAccount (0)	WellsFargo	\$8,875.86 [USD]	\$8,875.86 [USD]	2016-02-28T14:16:23.622Z	2016-02-28T20:00:18.148Z	MF4706FVEBIQ3NN	APPROVED	0000

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2016-02-26	2016-02-28	2016-02-28	3H	0000	0000	20553	0000	0000	0000	Debit	1	8875.86	USD	CAMPS.DisbursementSuccess.6060083! WellsFargo-MF4706FVEBIQ3NN.FE.1
2016-02-26	2016-02-28	2016-02-28	3H	0000	0000	10123	7809	0000	0000	Credit	1	-8875.86	USD	CAMPS.DisbursementSuccess.6060083! WellsFargo-MF4706FVEBIQ3NN.FE.2

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	A	B	C	D	E	F	G	H	I	J	K	L
1	Transaction Date	Accounting Date	Booking Date	Company Code	Location	Cost Center	Account Number	Product Line	Sales Channel	Project	Cr/Dr	Set of Books
2	2/10/2016	2/10/2016	2/10/2016	22	1795	1200	57100	2700	1000	0	Debit	1
3	2/10/2016	2/10/2016	2/10/2016	22	1795	1200	20301	2700	1000	0	Credit	1
4	2/10/2016	2/10/2016	2/10/2016	4	0	0	23110	0	0	0	Debit	1
5	2/10/2016	2/10/2016	2/10/2016	4	0	0	23110	0	0	0	Debit	1
6	2/10/2016	2/10/2016	2/10/2016	4	1795	1200	40100	2700	1000	0	Credit	1
7	2/10/2016	2/10/2016	2/10/2016	4	1548	0	26111	0	0	0	Credit	1
8	2/10/2016	2/10/2016	2/10/2016	22	1795	1200	50100	2700	1000	0	Debit	1
9	2/10/2016	2/10/2016	2/10/2016	22	1795	1200	12120	2700	1000	0	Credit	1

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	M	N
1	Functional Amount	Functional Currency
2	1.3	USD
3	-1.3	USD
4	0.96	USD
5	9.99	USD
6	-9.99	USD
7	-0.96	USD
8	5.55	USD
9	-5.55	USD

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Amazon Services LLC v South Carolina Department of Revenue
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	O
1	Journal Line External ID
2	160210185933004162798450201#160210185933004162798450201#UNKNOWN-160210185933004162798450201v2SHIPMENT_UPDATE16.1
3	160210185933004162798450201#160210185933004162798450201#UNKNOWN-160210185933004162798450201v2SHIPMENT_UPDATE16.1-1
4	COW.ShipmentID.1528856904083.FE.3
5	COW.ShipmentID.1528856904083.FE.1
6	COW.ShipmentID.1528856904083.FE.2
7	COW.ShipmentID.1528856904083.FE.5
8	COW.shipment_id.1528856904083.1
9	COW.shipment_id.1528856904083.1-1

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	P	Q
1	GL Line Description	Journal Line Intent
2	TRANSPAY_FREIGHT_OUT	Original
3	TRANSPAY_UNVOUCHERED_PAYABLES_FREIGHT_OUT	Original
4	COW_AmazonRetailSales_Tax	Original
5	COW_AmazonRetailSales_Product	Original
6	COW_AmazonRetailSales_Product	Original
7	COW_AmazonRetailSales_Tax	Original
8	AMZ CUSTOMER_SHIPMENT ORIGINAL_SHIPMENT	Original
9	AMZ CUSTOMER_SHIPMENT ORIGINAL_SHIPMENT	Original

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	A	B	C	D	E	F	G	H	I	J	K	L
1	Transaction Date	Accounting Date	Booking Date	Company Code	Location	Cost Center	Account Number	Product Line	Sales Channel	Project	Cr/Dr	Set of Books
2	1/8/2016	1/8/2016	1/11/2016	3H	0	0	1382H	0	0	PL20	Debit	1
3	1/8/2016	1/8/2016	1/11/2016	2H	0	0	1383H	0	0	PL20	Credit	1
4	1/8/2016	1/8/2016	1/11/2016	3H	0	0	82408	6430	0	PL20	Credit	1
5	1/8/2016	1/8/2016	1/11/2016	2H	0	0	82409	6430	0	PL20	Debit	1
6	1/11/2016	1/11/2016	1/11/2016	3H	0	0	1382H	0	0	SP81	Credit	1
7	1/11/2016	1/11/2016	1/11/2016	2H	0	0	1383H	0	0	SP81	Debit	1
8	1/11/2016	1/11/2016	1/11/2016	3H	0	0	20553	0	0	0	Debit	1
9	1/11/2016	1/11/2016	1/11/2016	2H	0	0	42573	6430	3045	0	Credit	1
10	1/11/2016	1/11/2016	1/11/2016	3H	0	0	20553	0	0	0	Credit	1
11	1/11/2016	1/11/2016	1/11/2016	3H	0	0	13125	0	0	0	Debit	1

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Protected Information Subject to Protective Order
Amazon Services LLC v South Carolina Department of Revenue
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	M	N	O
1	Functional Amount	Functional Currency	Journal Line External ID
2	1.25	USD	STARS.FulfillmentCharges.amzn1.stars.v1.COW.v1.1763430420089_Charges.FE.6
3	-1.25	USD	STARS.FulfillmentCharges.amzn1.stars.v1.COW.v1.1763430420089_Charges.FE.7
4	-1.25	USD	STARS.FulfillmentCharges.amzn1.stars.v1.COW.v1.1763430420089_Charges.FE.8
5	1.25	USD	STARS.FulfillmentCharges.amzn1.stars.v1.COW.v1.1763430420089_Charges.FE.5
6	-9.36	USD	STARS.FulfillmentFees.amzn1.stars.v1.COW.v1.1763430420089_Fees_AA6LP06W3PUU5.FE.3
7	9.36	USD	STARS.FulfillmentFees.amzn1.stars.v1.COW.v1.1763430420089_Fees_AA6LP06W3PUU5.FE.2
8	9.36	USD	STARS.FulfillmentFees.amzn1.stars.v1.COW.v1.1763430420089_Fees_AA6LP06W3PUU5.FE.1
9	-9.36	USD	STARS.FulfillmentFees.amzn1.stars.v1.COW.v1.1763430420089_Fees_AA6LP06W3PUU5.FE.4
10	-62.4	USD	STARS.FulfillmentCharges.amzn1.stars.v1.COW.v1.1763430420089_Charges.FE.2
11	62.4	USD	STARS.FulfillmentCharges.amzn1.stars.v1.COW.v1.1763430420089_Charges.FE.1

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Amazon Services LLC v South Carolina Department of Revenue
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	P	Q
1	GL Line Description	Journal Line Intent
2	FeeSvc_MerchantServices_ShipmentComplete	Original
3	FeeSvc_MerchantServices_ShipmentComplete	Original
4	FeeSvc_MerchantServices_ShipmentComplete	Original
5	FeeSvc_MerchantServices_ShipmentComplete	Original
6	FeeSvc_MerchantServices_ShipmentComplete	Original
7	FeeSvc_MerchantServices_ShipmentComplete	Original
8	FeeSvc_MerchantServices_ShipmentComplete	Original
9	FeeSvc_MerchantServices_ShipmentComplete	Original
10	COW_ThirdPartySales_Shipment	Original
11	COW_ThirdPartySales_Shipment	Original

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ROA_00978

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	A	B	C	D	E	F	G	H	I	J	K	L
1	Transaction Date	Accounting Date	Booking Date	Company Code	Location	Cost Center	Account Number	Product Line	Sales Channel	Project	Cr/Dr	Set of Books
2	2/1/2016	2/1/2016	2/1/2016	3H	0	0	1382H	0	0	PL20	Debit	1
3	2/1/2016	2/1/2016	2/1/2016	2H	0	0	1383H	0	0	PL20	Credit	1
4	2/1/2016	2/1/2016	2/1/2016	3H	0	0	82408	2000	0	PL20	Credit	1
5	2/1/2016	2/1/2016	2/1/2016	2H	0	0	82409	2000	0	PL20	Debit	1
6	2/1/2016	2/1/2016	2/1/2016	3H	0	0	20553	0	0	0	Credit	1
7	2/1/2016	2/1/2016	2/1/2016	3H	0	0	20553	0	0	0	Credit	1
8	2/1/2016	2/1/2016	2/1/2016	3H	0	0	13125	0	0	0	Debit	1
9	2/1/2016	2/1/2016	2/1/2016	3H	0	0	1382H	0	0	SP81	Credit	1
10	2/1/2016	2/1/2016	2/1/2016	3H	0	0	1382H	0	0	SP81	Credit	1
11	2/1/2016	2/1/2016	2/1/2016	2H	0	0	1383H	0	0	SP81	Debit	1
12	2/1/2016	2/1/2016	2/1/2016	2H	0	0	1383H	0	0	SP81	Debit	1
13	2/1/2016	2/1/2016	2/1/2016	3H	0	0	20553	0	0	0	Debit	1
14	2/1/2016	2/1/2016	2/1/2016	3H	0	0	20553	0	0	0	Debit	1
15	2/1/2016	2/1/2016	2/1/2016	2H	0	0	42575	2000	3045	0	Credit	1
16	2/1/2016	2/1/2016	2/1/2016	2H	0	0	42573	2000	3045	0	Credit	1

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	M	N	O
1	Functional Amount	Functional Currency	Journal Line External ID
2	6.19	USD	STARS.FulfillmentCharges.amzn1.stars.v1.COW.v1.1777632558089_Charges.FE.6
3	-6.19	USD	STARS.FulfillmentCharges.amzn1.stars.v1.COW.v1.1777632558089_Charges.FE.7
4	-6.19	USD	STARS.FulfillmentCharges.amzn1.stars.v1.COW.v1.1777632558089_Charges.FE.8
5	6.19	USD	STARS.FulfillmentCharges.amzn1.stars.v1.COW.v1.1777632558089_Charges.FE.5
6	-299	USD	STARS.FulfillmentCharges.amzn1.stars.v1.COW.v1.1777632558089_Charges.FE.2
7	-8.74	USD	STARS.FulfillmentCharges.amzn1.stars.v1.COW.v1.1777632558089_Charges.FE.4
8	307.74	USD	STARS.FulfillmentCharges.amzn1.stars.v1.COW.v1.1777632558089_Charges.FE.1.AGG
9	-1.35	USD	STARS.FulfillmentFees.amzn1.stars.v1.COW.v1.1777632558089_Fees_A3A77WS2WAL84W.FE.23
10	-23.92	USD	STARS.FulfillmentFees.amzn1.stars.v1.COW.v1.1777632558089_Fees_A3A77WS2WAL84W.FE.3
11	1.35	USD	STARS.FulfillmentFees.amzn1.stars.v1.COW.v1.1777632558089_Fees_A3A77WS2WAL84W.FE.22
12	23.92	USD	STARS.FulfillmentFees.amzn1.stars.v1.COW.v1.1777632558089_Fees_A3A77WS2WAL84W.FE.2
13	1.35	USD	STARS.FulfillmentFees.amzn1.stars.v1.COW.v1.1777632558089_Fees_A3A77WS2WAL84W.FE.21
14	23.92	USD	STARS.FulfillmentFees.amzn1.stars.v1.COW.v1.1777632558089_Fees_A3A77WS2WAL84W.FE.1
15	-1.35	USD	STARS.FulfillmentFees.amzn1.stars.v1.COW.v1.1777632558089_Fees_A3A77WS2WAL84W.FE.24
16	-23.92	USD	STARS.FulfillmentFees.amzn1.stars.v1.COW.v1.1777632558089_Fees_A3A77WS2WAL84W.FE.4

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ROA_00980

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	P	Q
1	GL Line Description	Journal Line Intent
2	FeeSvc_MerchantServices_ShipmentComplete	Original
3	FeeSvc_MerchantServices_ShipmentComplete	Original
4	FeeSvc_MerchantServices_ShipmentComplete	Original
5	FeeSvc_MerchantServices_ShipmentComplete	Original
6	COW_ThirdPartySales_Shipment	Original
7	COW_ThirdPartySales_Shipment	Original
8	COW_ThirdPartySales_Shipment	Original
9	FeeSvc_MerchantServices_ShipmentComplete	Original
10	FeeSvc_MerchantServices_ShipmentComplete	Original
11	FeeSvc_MerchantServices_ShipmentComplete	Original
12	FeeSvc_MerchantServices_ShipmentComplete	Original
13	FeeSvc_MerchantServices_ShipmentComplete	Original
14	FeeSvc_MerchantServices_ShipmentComplete	Original
15	FeeSvc_MerchantServices_ShipmentComplete	Original
16	FeeSvc_MerchantServices_ShipmentComplete	Original

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	A	B	C	D	E	F	G	H	I	J	K	L
1	Transaction Date	Accounting Date	Booking Date	Company Code	Location	Cost Center	Account Number	Product Line	Sales Channel	Project	Cr/Dr	Set of Books
2	1/13/2016	1/13/2016	1/13/2016	4	0	0	23110	0	0	0	Debit	1
3	1/13/2016	1/13/2016	1/13/2016	4	0	0	23110	0	0	0	Debit	1
4	1/13/2016	1/13/2016	1/13/2016	4	1419	1200	40100	1000	1000	0	Credit	1
5	1/13/2016	1/13/2016	1/13/2016	4	1541	0	26111	0	0	0	Credit	1
6	1/13/2016	1/13/2016	1/13/2016	22	1419	1200	50100	1000	1000	0	Debit	1
7	1/13/2016	1/13/2016	1/13/2016	22	1419	1200	12120	1000	1000	0	Credit	1

AS0115646

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ROA_00982

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	M	N	O	P	Q
1	Functional Amount	Functional Currency	Journal Line External ID	GL Line Description	Journal Line Intent
2	0.36	USD	COW.ShipmentID.3391903990124.FE.3	COW_AmazonRetailSales_Tax	Original
3	6	USD	COW.ShipmentID.3391903990124.FE.1	COW_AmazonRetailSales_Product	Original
4	-6	USD	COW.ShipmentID.3391903990124.FE.2	COW_AmazonRetailSales_Product	Original
5	-0.36	USD	COW.ShipmentID.3391903990124.FE.5	COW_AmazonRetailSales_Tax	Original
6	4.41	USD	COW.shipment_id.3391903990124.1	AMZ CUSTOMER_SHIPMENT ORIGINAL_SHIPMENT	Original
7	-4.41	USD	COW.shipment_id.3391903990124.1-1	AMZ CUSTOMER_SHIPMENT ORIGINAL_SHIPMENT	Original

AS0115647

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ROA_00983

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	A	B	C	D	E	F	G	H	I	J	K	L
1	Transaction Date	Accounting Date	Booking Date	Company Code	Location	Cost Center	Account Number	Product Line	Sales Channel	Project	Cr/Dr	Set of Books
2	3/3/2016	3/3/2016	3/3/2016	3H	0	0	20553	0	0	0	Credit	1
3	3/3/2016	3/3/2016	3/3/2016	3H	0	0	20553	0	0	0	Credit	1
4	3/3/2016	3/3/2016	3/3/2016	3H	0	0	13125	0	0	0	Debit	1
5	3/3/2016	3/3/2016	3/3/2016	3H	0	0	20553	0	0	0	Debit	1
6	3/3/2016	3/3/2016	3/3/2016	3H	0	0	20553	0	0	0	Debit	1
7	3/3/2016	3/3/2016	3/3/2016	2H	0	0	42573	6429	3085	0	Credit	1
8	3/3/2016	3/3/2016	3/3/2016	2H	1420	0	47150	6429	3085	0	Credit	1
9	3/3/2016	3/3/2016	3/3/2016	2H	1420	0	42551	6429	3085	0	Credit	1
10	3/3/2016	3/3/2016	3/3/2016	2H	1420	0	42552	6429	3085	0	Credit	1
11	3/3/2016	3/3/2016	3/3/2016	2H	1420	0	42554	6429	3085	0	Credit	1
12	3/3/2016	3/3/2016	3/3/2016	2H	0	0	82409	6429	0	PL20	Debit	1
13	3/3/2016	3/3/2016	3/3/2016	2H	0	0	1383H	0	0	SP81	Debit	1
14	3/3/2016	3/3/2016	3/3/2016	3H	0	0	1382H	0	0	SP81	Credit	1
15	3/3/2016	3/3/2016	3/3/2016	2H	0	0	1383H	0	0	SP81	Debit	1
16	3/3/2016	3/3/2016	3/3/2016	3H	0	0	1382H	0	0	SP81	Credit	1
17	3/3/2016	3/3/2016	3/3/2016	2H	0	0	1383H	0	0	SP81	Debit	1
18	3/3/2016	3/3/2016	3/3/2016	3H	0	0	1382H	0	0	SP81	Credit	1
19	3/3/2016	3/3/2016	3/3/2016	2H	0	0	1383H	0	0	SP81	Debit	1
20	3/3/2016	3/3/2016	3/3/2016	3H	0	0	1382H	0	0	SP81	Credit	1
21	3/3/2016	3/3/2016	3/3/2016	2H	0	0	1383H	0	0	SP81	Debit	1
22	3/3/2016	3/3/2016	3/3/2016	3H	0	0	1382H	0	0	SP81	Credit	1
23	3/3/2016	3/3/2016	3/3/2016	2H	0	0	1383H	0	0	PL20	Credit	1
24	3/3/2016	3/3/2016	3/3/2016	3H	0	0	1382H	0	0	PL20	Debit	1
25	3/3/2016	3/3/2016	3/3/2016	3H	0	0	82408	6429	0	PL20	Credit	1

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	M	N	O	P	Q
1	Functional Amount	Functional Currency	Journal Line External ID	GL Line Description	Journal Line Intent
2	-18.19	USD	COW.ShipmentID.4068644847907.1	COW_ThirdPartySales_Shipment	Original
3	-6.83	USD	COW.ShipmentID.4068644847907.2	COW_ThirdPartySales_Shipment	Original
4	25.02	USD	COW.ShipmentID.4068644847907.3	COW_AggregatedPayment_Shipment	Original
5	9.56	USD	COW.ShipmentID.4068644847907.4	FeeSvc_AggregatedFees_ShipmentComplete	Original
6	3.02	USD	COW.ShipmentID.4068644847907.5	FeeSvc_AggregatedFees_FulfillmentComplete	Original
7	-2.73	USD	COW.ShipmentID.4068644847907.6	FeeSvc_MerchantServices_ShipmentComplete	Original
8	-6.83	USD	COW.ShipmentID.4068644847907.7	FeeSvc_MerchantServices_ShipmentComplete	Original
9	-1	USD	COW.ShipmentID.4068644847907.8	FeeSvc_FBAServices_FulfillmentComplete	Original
10	-1.06	USD	COW.ShipmentID.4068644847907.9	FeeSvc_FBAServices_FulfillmentComplete	Original
11	-0.96	USD	COW.ShipmentID.4068644847907.10	FeeSvc_FBAServices_FulfillmentComplete	Original
12	0.5	USD	COW.ShipmentID.4068644847907.11	FeeSvc_MerchantServices_ShipmentComplete	Original
13	2.73	USD	COW.ShipmentID.4068644847907.6-1	FeeSvc_MerchantServices_ShipmentComplete	Original
14	-2.73	USD	COW.ShipmentID.4068644847907.6-2	FeeSvc_MerchantServices_ShipmentComplete	Original
15	6.83	USD	COW.ShipmentID.4068644847907.7-1	FeeSvc_MerchantServices_ShipmentComplete	Original
16	-6.83	USD	COW.ShipmentID.4068644847907.7-2	FeeSvc_MerchantServices_ShipmentComplete	Original
17	1	USD	COW.ShipmentID.4068644847907.8-1	FeeSvc_FBAServices_FulfillmentComplete	Original
18	-1	USD	COW.ShipmentID.4068644847907.8-2	FeeSvc_FBAServices_FulfillmentComplete	Original
19	1.06	USD	COW.ShipmentID.4068644847907.9-1	FeeSvc_FBAServices_FulfillmentComplete	Original
20	-1.06	USD	COW.ShipmentID.4068644847907.9-2	FeeSvc_FBAServices_FulfillmentComplete	Original
21	0.96	USD	COW.ShipmentID.4068644847907.10-1	FeeSvc_FBAServices_FulfillmentComplete	Original
22	-0.96	USD	COW.ShipmentID.4068644847907.10-2	FeeSvc_FBAServices_FulfillmentComplete	Original
23	-0.5	USD	COW.ShipmentID.4068644847907.11-1	FeeSvc_MerchantServices_ShipmentComplete	Original
24	0.5	USD	COW.ShipmentID.4068644847907.11-2	FeeSvc_MerchantServices_ShipmentComplete	Original
25	-0.5	USD	COW.ShipmentID.4068644847907.11-3	FeeSvc_MerchantServices_ShipmentComplete	Original

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Amazon Services LLC
 Journal Entries
 Amazon.com LLC Order:
 Order ID: 300254814294061559
 Shipment ID: 1528856804083

Transaction Date	Booking Date	Company Code	Account Number	Product Line	Sales Channel	Cr/Dr	Functional Amount	Journal Line External ID	GL Line Description
2/10/2016	2/10/2016	31	57100	2700	1000	Debit	1.3	690210135933004162795450201#169219183693004162795450201RUNNING	TRANSPAY FREIGHT OUT
2/10/2016	2/10/2016	31	10504	2700	1000	Credit	-1.3	690210135933004162795450201#169219183693004162795450201RUNNING	TRANSPAY UNVOUCHERED PAYABLES FREIGHT OUT
2/10/2016	2/10/2016	4	23112	0	0	Debit	8.99	690210135933004162795450201#169219183693004162795450201RUNNING	COVW AmazonRetailSales Tbl
2/10/2016	2/10/2016	4	23112	0	0	Debit	8.99	690210135933004162795450201#169219183693004162795450201RUNNING	COVW AmazonRetailSales Product
2/10/2016	2/10/2016	4	40100	2700	1000	Credit	-8.99	690210135933004162795450201#169219183693004162795450201RUNNING	COVW AmazonRetailSales Tbl
2/10/2016	2/10/2016	4	26112	0	0	Credit	-0.96	690210135933004162795450201#169219183693004162795450201RUNNING	COVW AmazonRetailSales Tbl
2/10/2016	2/10/2016	31	50100	2700	1000	Debit	3.55	690210135933004162795450201#169219183693004162795450201RUNNING	AMZ CUSTOMER SHIPMENT ORIGINAL SHIPMENT
2/10/2016	2/10/2016	31	27120	2700	1000	Credit	-3.55	690210135933004162795450201#169219183693004162795450201RUNNING	AMZ CUSTOMER SHIPMENT ORIGINAL SHIPMENT

AS0115650

Amazon Services LLC
Journal Entries
Third Party Merchant Order-Fulfilled by Amazon
Order ID: 106-5705273-7960260
Shipment ID: 3904854393906

Transaction Date	Booking Date	Company Code	Account Number	Product Line	Sales Channel	Project	Cr/Dr	Functional Amount	Journal Line External ID	GL Line Description
3/27/2016	3/27/2016	3H	20553	0	0	0	Credit	-11.9	COW.ShipmentID.3904854393906.1	COW_ThirdPartySales_Shipment
3/27/2016	3/27/2016	3H	13125	0	0	0	Debit	11.9	COW.ShipmentID.3904854393906.2	COW_AggregatedPayment_Shipment
3/27/2016	3/27/2016	3H	20553	0	0	0	Debit	2.56	COW.ShipmentID.3904854393906.3	FeeSvc_AggregatedFees_FulfillmentComplete
3/27/2016	3/27/2016	3H	20553	0	0	0	Debit	1	COW.ShipmentID.3904854393906.4	FeeSvc_AggregatedFees_ShipmentComplete
3/27/2016	3/27/2016	2H	42573	2510	3085	0	Credit	-1	COW.ShipmentID.3904854393906.5	FeeSvc_MerchantServices_ShipmentComplete
3/27/2016	3/27/2016	2H	42551	2510	3085	0	Credit	-1	COW.ShipmentID.3904854393906.6	FeeSvc_FBAServices_FulfillmentComplete
3/27/2016	3/27/2016	2H	42552	2510	3085	0	Credit	-1.06	COW.ShipmentID.3904854393906.7	FeeSvc_FBAServices_FulfillmentComplete
3/27/2016	3/27/2016	2H	42554	2510	3085	0	Credit	-0.5	COW.ShipmentID.3904854393906.8	FeeSvc_FBAServices_FulfillmentComplete
3/27/2016	3/27/2016	2H	82409	2510	0	PL20	Debit	0.24	COW.ShipmentID.3904854393906.9	FeeSvc_MerchantServices_ShipmentComplete
3/27/2016	3/27/2016	2H	1382H	0	0	SP81	Debit	1	COW.ShipmentID.3904854393906.5-1	FeeSvc_MerchantServices_ShipmentComplete
3/27/2016	3/27/2016	3H	1382H	0	0	SP81	Credit	-1	COW.ShipmentID.3904854393906.5-2	FeeSvc_MerchantServices_ShipmentComplete
3/27/2016	3/27/2016	2H	1383H	0	0	SP81	Debit	1	COW.ShipmentID.3904854393906.6-1	FeeSvc_FBAServices_FulfillmentComplete
3/27/2016	3/27/2016	3H	1382H	0	0	SP81	Credit	-1	COW.ShipmentID.3904854393906.6-2	FeeSvc_FBAServices_FulfillmentComplete
3/27/2016	3/27/2016	2H	1383H	0	0	SP81	Debit	1.06	COW.ShipmentID.3904854393906.7-1	FeeSvc_FBAServices_FulfillmentComplete
3/27/2016	3/27/2016	3H	1382H	0	0	SP81	Credit	-1.06	COW.ShipmentID.3904854393906.7-2	FeeSvc_FBAServices_FulfillmentComplete
3/27/2016	3/27/2016	2H	1383H	0	0	SP81	Debit	0.5	COW.ShipmentID.3904854393906.8-1	FeeSvc_FBAServices_FulfillmentComplete
3/27/2016	3/27/2016	3H	1382H	0	0	SP81	Credit	-0.5	COW.ShipmentID.3904854393906.8-2	FeeSvc_FBAServices_FulfillmentComplete
3/27/2016	3/27/2016	2H	1383H	0	0	PL20	Credit	-0.24	COW.ShipmentID.3904854393906.9-1	FeeSvc_MerchantServices_ShipmentComplete
3/27/2016	3/27/2016	3H	1382H	0	0	PL20	Debit	0.24	COW.ShipmentID.3904854393906.9-2	FeeSvc_MerchantServices_ShipmentComplete
3/27/2016	3/27/2016	3H	82408	2510	0	PL20	Credit	-0.24	COW.ShipmentID.3904854393906.9-3	FeeSvc_MerchantServices_ShipmentComplete

Protected Information Subject to Protective Order
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ROA_00987

AS0115651

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Protected Information Subject to Protective Order
Amazon Services LLC v South Carolina Department of Revenue
Docket No. 17-ALJ-17-0238-CC

Amazon Services LLC
Journal Entries
Third Party Merchant Open-Buyfiled by Merchant
Order ID: A12-0801700-4355442
Shipment ID: A1763430410008

Transaction Date	Booking Date	Company Code	Account Number	Product Line	Sales Channel	Project	Co/Dr	Functional Amount	Journal Line External ID	GL Line Description
1/11/2016	1/11/2016 2H		3325	0	0	0	Debit	81.4	ITARS FulfillmentCharges-amznLstarc vs COW vs 1763430410008	Charges FE 1
1/11/2016	1/11/2016 2H		30738	0	0	0	Credit	-81.3	ITARS FulfillmentCharges-amznLstarc vs COW vs 1763430410008	COW ThirdPartySales Shipment
1/9/2016	1/11/2016 2H		31048	6430	0	FL20	Debit	1.25	ITARS FulfillmentCharges-amznLstarc vs COW vs 1763430410008	Charges FE 2
1/8/2016	1/11/2016 2H		13834	0	0	FL20	Debit	1.25	ITARS FulfillmentCharges-amznLstarc vs COW vs 1763430410008	Charges FE 3
1/8/2016	1/11/2016 2H		13834	0	0	FL20	Debit	1.25	ITARS FulfillmentCharges-amznLstarc vs COW vs 1763430410008	Charges FE 4
1/8/2016	1/11/2016 2H		13834	0	0	FL20	Credit	-1.25	ITARS FulfillmentCharges-amznLstarc vs COW vs 1763430410008	Charges FE 5
1/8/2016	1/11/2016 2H		13400	6430	0	FL20	Credit	-1.25	ITARS FulfillmentCharges-amznLstarc vs COW vs 1763430410008	Charges FE 6
1/11/2016	1/11/2016 2H		30738	0	0	0	Debit	9.36	ITARS FulfillmentFees-amznLstarc vs COW vs 1763430410008	Fees AA6LPOW9PULUS FE 1
1/11/2016	1/11/2016 2H		13834	0	0	SPB1	Debit	9.36	ITARS FulfillmentFees-amznLstarc vs COW vs 1763430410008	Fees AA6LPOW9PULUS FE 1
1/11/2016	1/11/2016 2H		13834	0	0	SPB1	Credit	-9.36	ITARS FulfillmentFees-amznLstarc vs COW vs 1763430410008	Fees AA6LPOW9PULUS FE 2
1/11/2016	1/11/2016 2H		43578	6430	8342	0	Credit	-9.36	ITARS FulfillmentFees-amznLstarc vs COW vs 1763430410008	Fees AA6LPOW9PULUS FE 2

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ROA_00988

Protected Information Subject to Protective Order
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Docket No. 17-ALJ-17-0238-CC

Amazon Services LLC
Journal Entries
South Carolina Order Examples-Amazon Systems
Amazon.com LLC Order
Order ID: 002-0242252-3401021
Shipment ID: 3391903990124

Transaction Date	Booking Date	Company Code	Account Number/Product Line	Sales Channel	Project	Cr/Dr	Functional Amount	Journal Line External ID	GL Line Description
1/13/2016	1/13/2016	22	50100	1000	1000	0 Debit	4.41	COW.Shipment_id.3391903990124.1	AMZ CUSTOMER_SHIPMENT ORIGINAL_SHIPMENT
1/13/2016	1/13/2016	22	12120	1000	1000	0 Credit	-4.41	COW.Shipment_id.3391903990124.1-1	AMZ CUSTOMER_SHIPMENT ORIGINAL_SHIPMENT
1/13/2016	1/13/2016	4	23310	0	0	0 Debit	0.36	COW.ShipmentID.3391903990124.FE.3	COW_AmazonRetailSales_Tax
1/13/2016	1/13/2016	4	23310	0	0	0 Debit	6	COW.ShipmentID.3391903990124.FE.1	COW_AmazonRetailSales_Product
1/13/2016	1/13/2016	4	40100	1000	1000	0 Credit	-6	COW.ShipmentID.3391903990124.FE.2	COW_AmazonRetailSales_Product
1/13/2016	1/13/2016	4	26111	0	0	0 Credit	-0.36	COW.ShipmentID.3391903990124.FE.5	COW_AmazonRetailSales_Tax

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ROA_00989

DATE	TIME	AMOUNT	CURRENCY	TYPE	STATUS	DESCRIPTION	REFERENCE	REMARKS
3/3/2016	3/3/2016 3H	20553	0	0	0 Credit	-18.19	COW_ShipmentID:4068644847907.1	COW_ThirdPartySales_Shipment
3/3/2016	3/3/2016 3H	13125	0	0	0 Debit	25.02	COW_ShipmentID:4068644847907.3	COW_AggregatedPayment_Shipment
3/3/2016	3/3/2016 3H	20553	0	0	0 Debit	3.02	COW_ShipmentID:4068644847907.5	FeeSvc_AggregatedFees_FulfillmentComplete
3/3/2016	3/3/2016 2H	47150	6429	3085	0 Credit	-6.83	COW_ShipmentID:4068644847907.7	FeeSvc_MerchantServices_ShipmentComplete
3/3/2016	3/3/2016 2H	42552	6429	3085	0 Credit	-1.06	COW_ShipmentID:4068644847907.9	FeeSvc_FBA_Services_FulfillmentComplete
3/3/2016	3/3/2016 2H	82409	6429	0 PL10	Debit	0.5	COW_ShipmentID:4068644847907.11	FeeSvc_MerchantServices_ShipmentComplete
3/3/2016	3/3/2016 3H	1382H	0	0 SPB1	Credit	-2.73	COW_ShipmentID:4068644847907.6-2	FeeSvc_MerchantServices_ShipmentComplete
3/3/2016	3/3/2016 3H	1382H	0	0 SPB1	Credit	-6.83	COW_ShipmentID:4068644847907.7-2	FeeSvc_MerchantServices_ShipmentComplete
3/3/2016	3/3/2016 3H	1382H	0	0 SPB1	Credit	-1	COW_ShipmentID:4068644847907.8-2	FeeSvc_FBA_Services_FulfillmentComplete
3/3/2016	3/3/2016 3H	1382H	0	0 SPB1	Credit	-1.06	COW_ShipmentID:4068644847907.9-2	FeeSvc_FBA_Services_FulfillmentComplete
3/3/2016	3/3/2016 3H	1382H	0	0 SPB1	Credit	-0.86	COW_ShipmentID:4068644847907.10-2	FeeSvc_FBA_Services_FulfillmentComplete
3/3/2016	3/3/2016 3H	1382H	0	0 PL20	Debit	0.5	COW_ShipmentID:4068644847907.11-2	FeeSvc_MerchantServices_ShipmentComplete

ROA 00990

[illegible]**ROA_00991**

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Amazon Services LLC v South Carolina Department of Revenue
Docket No. 17-ALJ-17-0238-CC

Payments from Amazon Payments Inc Amazon Services LLC Beta [Learn more](#)

[Statement View](#) [Transaction View](#) [All Statements](#) [Date Range Reports](#)

 A transfer was made to your bank account ending in 1693 in the amount of \$8,875.86 on Feb 28, 2016. Funds can take 3-5 business days to appear in your bank account.

Federal Automated Clearing House (ACH) Trace ID for this fund transfer: 091000014200632.

Your statement for Feb 13, 2016 05:09 PST - Feb 27, 2016 05:09 PST [Next](#)

How did this statement begin?

Beginning Balance	Previous statement's unavailable balance	\$0.00
	Subtotal	\$0.00

What events occurred during the statement period?

Orders	Product charges	\$14,870.21
	Promo rebates	-\$380.49
	Amazon fees	-\$8,425.99
	Other (shipping & gift wrap credits)	\$833.13
	Subtotal	\$6,896.86
Refunds	Product charges	-\$135.40
	Promo rebates	\$3.37
	Amazon fees	\$20.19
	Other	-\$12.83
	Subtotal	-\$124.67
Selling Fees	FBA fees	-\$86.36
	Subtotal	-\$86.36
Other Transactions	Other	\$100.03
	Subtotal	\$100.03

What is the result?

Closing Balance	Total balance	\$8,875.86

When will you be paid?

Transfer amount initiated on Feb 28, 2016*	\$8,875.86

*Transfers can take 3-5 business days to complete

[View transactions for this period](#)  [Print this page](#)

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AS0115656

APP_01010

ROA_00992



STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE

300A Outlet Pointe Blvd., Columbia, South Carolina 29210
P.O. Box 12265, Columbia, South Carolina 29211

**Hearing
Exhibit
137**

SC REVENUE RULING #18-14

SUBJECT: Retailers Without a Physical Presence (“Remote Sellers”) - Economic Nexus
(Sales and Use Tax)

EFFECTIVE DATE: For sales made on or after November 1, 2018, unless a later date is otherwise provided in this advisory opinion.

SUPERSEDES: SC Revenue Advisory Bulletin #01-7 and all previous documents and oral directives in conflict herewith.

MODIFIES: SC Revenue Ruling #14-4 and all previous documents and oral directives in conflict herewith.

AUTHORITY: S.C. Code Ann. Section 12-4-320 (2014)
S.C. Code Ann. Section 1-23-10(4) (2005)
SC Revenue Procedure #09-3

SCOPE: The purpose of a Revenue Ruling is to provide guidance to the public. It is an advisory opinion issued to apply principles of tax law to a set of facts or general category of taxpayers. It is the Department’s position until superseded or modified by a change in statute, regulation, court decision, or another Departmental advisory opinion.

I. OVERVIEW OF NEXUS AND WAYFAIR DECISION

Nexus is a sufficient connection between a person and a state, and a sufficient connection between an activity, property, or transaction and a state, that allows the state to subject the person, and the activity, property, or transaction to its taxing jurisdiction. The Due Process and Commerce Clauses of the United States Constitution and other federal statutes provide limitations on a state’s powers to tax out-of-state businesses. Over the years, the courts have provided limitations and guidelines in determining whether certain activities create nexus in a taxing state.

On June 21, 2018, the United States Supreme Court in *South Dakota v. Wayfair, Inc.*, 585 U.S. ___, 138 S. Ct. 2080 (2018), ruled that retailers (including online retailers) without physical presence in a state may be subject to sales and use tax. This decision overturned the Court’s longstanding position in *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992) and *National Bellas Hess, Inc. v. Department of Revenue of Illinois*, 386 U.S. 753 (1967), which allowed states to collect sales and use tax only on retailers with a physical presence.

South Carolina Code Section 12-36-70 defines “retailer” and “seller” to include persons not maintaining a physical presence in South Carolina, and reads in part:

“Retailer” and “seller” include every person:

(1)(a) selling or auctioning tangible personal property whether owned by the person or others;

* * *

(2)(a) maintaining a place of business or qualifying to do business in this State; or
(b) not maintaining an office or location in this State but soliciting business by direct or indirect representatives, manufacturers agents, distribution of catalogs, or other advertising matter or by any other means, and by reason thereof receives orders for tangible personal property or for storage, use, consumption, or distribution in this State (Emphasis added).

South Carolina has not enforced this provision against retailers without a physical presence because of the constitutional nexus restrictions under *National Bellas Hess* and *Quill*.¹ Because the United States Supreme Court has reversed its longstanding position and eliminated the physical presence requirement, South Carolina will require retailers who do not have a physical presence in South Carolina but who establish an economic presence as outlined below to remit the sales and use tax on a prospective basis beginning **November 1, 2018, unless a later date is otherwise provided in this advisory opinion.**

The purpose of this advisory opinion is to provide written guidance for retailers (*i.e.*, persons engaged in the business of selling tangible personal property at retail) without a physical presence in South Carolina regarding sales and use tax registration and remittance in light of *Wayfair*.

For purposes of this advisory opinion, a retailer with no physical presence in South Carolina is referred to as a “remote seller” (*e.g.*, marketplace,² online, catalog, or mail order retailer). In addition, a remote seller includes any related entity assisting the remote seller in sales, storage, distribution, payment collection, or in any other manner with respect to the remote seller.³

¹ See SC Revenue Procedure #92-2, “Filing Requirements Where Nexus Is an Issue;” SC Information Letter #92-19, “Nexus - *Quill Corp. v. North Dakota*,” and SC Information Letter #90-29, “Nexus - Economic Presence.”

² A “marketplace” is a person engaged in the business of facilitating a retail sale of tangible personal property by (1) listing or advertising, or allowing the listing or advertising of, the products of another person in any marketplace where sales at retail occur and (2) collecting or processing payments from the purchaser, either directly or indirectly through an agreement or arrangement with a third party, regardless of whether the marketplace receives compensation or other consideration in exchange for its services. A marketplace includes any related entity assisting the marketplace in sales, storage, distribution, payment collection, or in any other manner with respect to the marketplace.

A marketplace may be physical or electronic and includes, but is not limited to, any space, store, booth, catalog, website, television broadcast, or similar place, medium, or forum.

³ See the definition of the term “person” in Code Section 12-36-30, which includes “any group or combination acting as a unit.”

The prospective treatment outlined in this advisory opinion is limited to remote sellers and does not apply to retailers who have a physical presence in South Carolina or retailers currently licensed with the Department for sales and use tax purposes.

Note: This advisory opinion reflects the Department’s official position at this time. Since developments in this area are taking place, any guidance is subject to change due to a future statute, regulation, court decision, or advisory opinion. Any change in South Carolina’s position as set forth in this document that is not the result of a court case or change in statute or regulation will be prospective. Any change that is the result of a court case will apply to all periods open under the statute unless the court states otherwise and any change in statute or regulation will be applicable as of the effective date established by the General Assembly.

II. SUBSTANTIAL NEXUS STANDARDS FOR REMOTE SELLERS

In accordance with Code Section 12-36-70 and the principles of *Wayfair*, a remote seller whose gross revenue from sales of tangible personal property,⁴ products transferred electronically, and services delivered into South Carolina exceeds \$100,000 in the previous calendar year or the current calendar year has economic nexus (*i.e.*, substantial nexus) with South Carolina and is responsible for obtaining a retail license and remitting South Carolina sales and use tax.

III. CALCULATION OF THE \$100,000 ECONOMIC NEXUS STANDARD

The \$100,000 economic nexus standard for a remote seller includes:

- ◆ the total gross revenue from all sales of tangible personal property delivered into South Carolina, including all taxable retail sales, exempt retail sales, and wholesale sales of tangible personal property;
- ◆ the total gross revenue from all sales of products transferred electronically into South Carolina, whether or not the transfer of such product is subject to the South Carolina sales and use tax; and,
- ◆ the total gross revenue from all services delivered into South Carolina, whether or not the service is subject to the South Carolina sales and use tax.

Example 1 – Sales on Own Website: Assume a remote seller makes sales into South Carolina via his own website. His annual South Carolina sales total \$100,001. These sales consist of \$75,000 in taxable retail sales and \$25,001 in exempt retail sales and wholesale sales. Since the remote seller’s total gross revenue from all sales into South Carolina exceeds \$100,000, the remote seller

⁴ Code Section 12-36-60 defines “tangible personal property,” in part, as “personal property which may be seen, weighed, measured, felt, touched, or which is in any other manner perceptible to the senses. It also includes services and intangibles, including communications, laundry and related services, furnishing of accommodations and sales of electricity, the sale or use of which is subject to tax under [the South Carolina sales and use tax law].” For services that are specifically subject to the sales and use tax, and therefore by definition are “tangible personal property,” see Code Sections 12-36-910(B), 12-36-1310(B), 12-36-920, and 12-36-2645.

meets South Carolina’s economic nexus standard and he is required to obtain a retail license and remit the sales and use tax to the Department.

Example 2 – Sales on Own Website and Via a Marketplace: Assume a remote seller makes sales on his own website. He also lists his products for sale on a marketplace that has economic nexus with South Carolina. The remote seller sells \$75,000 of items into South Carolina via his own website. A marketplace makes sales of \$50,000 of products owned by the remote seller into South Carolina, and the marketplace collects or processes customer payments from these marketplace sales.

The calculation of the remote seller’s economic nexus standard includes the gross revenue from property owned by the remote seller but sold via the marketplace. Since the remote seller’s total gross revenue from South Carolina exceeds \$100,000 (\$75,000 + \$50,000), the remote seller meets South Carolina’s economic nexus standard. He is required to obtain a retail license and remit the sales and use tax to the Department on his “gross proceeds of sales”⁵ of \$75,000.

Since South Carolina’s economic nexus standard is based on “gross revenue,” revenue from the sales made via the marketplace in this example (Example 2) is included in the calculation for determining if the remote seller has established economic nexus with South Carolina. However, under South Carolina sales and use tax law, the sales made via the marketplace are sales by the marketplace, and the marketplace is required to obtain a retail license and collect and remit the sales and use tax on the marketplace’s “gross proceeds of sales,” which includes the \$50,000 in sales of products owned by the remote seller but sold by the marketplace.

IV. REGISTRATION AND TAX REMITTANCE BY REMOTE SELLERS WITH ECONOMIC NEXUS

In accordance with Code Section 12-36-70, Code Section 12-4-320, and the principles of *Wayfair*, remote sellers with economic nexus must remit the sales and use tax for all taxable sales made into South Carolina on and after **November 1, 2018**, as provided below. Remote sellers who are not currently licensed for sales and use tax purposes with the Department should follow the guidelines below.

A. Guidelines for Timely Registration and Remittance of Tax

1. Economic Nexus in Calendar Year 2017, or from January 1, 2018 through September 30, 2018

Remote sellers having economic nexus with South Carolina in calendar year 2017, or from January 1, 2018 through September 30, 2018, are responsible for remitting the sales and use tax for all taxable sales made into South Carolina on and after **November 1, 2018**.

⁵ “Gross proceeds of sales” is defined in Code Section 12-36-90. Generally, “gross proceeds of sales” is the value proceeding or accruing from the sale, lease, or rental of tangible personal property and, therefore, is the total amount charged in conjunction with the sale or rental of tangible personal property. However, see Code Section 12-36-90(2) for charges that are not included in “gross proceeds of sales.” For purposes of this advisory opinion, “gross proceeds of sales” applies to sales tax transactions and use tax transactions.

These remote sellers must obtain a retail license from the Department by November 1, 2018. Sales and use tax, penalties, and interest will not be assessed against these remote sellers for taxable sales by these remote sellers before November 1, 2018.

2. Economic Nexus Established on or after October 1, 2018

Remote sellers who establish economic nexus with South Carolina on or after October 1, 2018, are responsible for remitting the sales and use tax for all taxable sales made into South Carolina beginning the **first day of the second calendar month after economic nexus is established.**⁶ These remote sellers must obtain a retail license from the Department by the first day of the second calendar month after economic nexus is established. Sales and use tax, penalties, and interest will not be assessed against these remote sellers for taxable sales made into South Carolina before the first day of the second calendar month after economic nexus is established.

Example: Assume a remote seller establishes economic nexus in South Carolina on December 10, 2018 (*i.e.*, it exceeds \$100,000 in gross revenue from South Carolina). The remote seller must: (1) obtain a retail license by February 1, 2019 (the first day of the second calendar month after economic nexus is established) and (2) collect and remit the sales and use tax for all taxable sales made into South Carolina on and after February 1, 2019.

B. Failure to Timely Register and Remit Tax

Remote sellers who establish economic nexus with South Carolina as noted above, but who do not timely obtain a retail license from the Department are subject to sales and use tax assessment, penalties, and interest for all taxable sales made into South Carolina beginning with the date the remote seller was required to obtain a retail license.

V. VOLUNTARY REGISTRATION AND TAX REMITTANCE BY REMOTE SELLERS WITHOUT ECONOMIC NEXUS

Remote sellers who are not required to collect and remit the South Carolina sales and use tax may voluntarily obtain a retail license from the Department at any time and remit the sales and use tax for all taxable sales made into South Carolina. The collection and remittance of the sales and use tax by the remote seller applies to all taxable sales made in South Carolina on and after the effective date of the retail license. The voluntary filer must continue to collect and remit the tax for all tax periods until the remote seller notifies the Department that the retail license is being closed.

VI. SUBMITTING AN APPLICATION FOR A RETAIL LICENSE

Remote sellers who have established economic nexus with South Carolina, or who wish to voluntarily collect and remit the South Carolina sales and use tax, must obtain a retail license.

⁶ This is approximately 30 days from the end of the month in which economic nexus is established.

The Department's online portal for obtaining a retail license can be found at MyDORWAY.dor.sc.gov. Remote sellers using the online portal may submit the electronic application, along with the \$50 fee, **beginning September 28, 2018.**

The Department's paper application for a remote seller's retail license is South Carolina Form DOR-111RS, "Remote Seller Sales and Use Tax Registration." This form is on the Department's website (dor.sc.gov). Remote sellers using this form may submit the paper application, along with the \$50 fee, at any time.

A remote seller who has obtained a retail license from the Department must file a sales and use tax return (paper or electronic) and report its total gross proceeds of sales for each month it is licensed beginning with the effective date of the retail license.

VII. ADDITIONAL INFORMATION

1. Filing Requirements

Remote sellers licensed with the Department must file a monthly sales and use tax return. Each monthly return is due by the 20th day of the following month. Returns must be filed for all months, even in those months the taxpayer has no sales into South Carolina or has no tax due. Exception: If a remote seller's total state and local sales and use tax due does not exceed \$100 for any month, then the remote seller may file quarterly upon approval by the Department.

2. Information for Remote Sellers

Remote sellers may obtain additional information on the Department's website (dor.sc.gov). The website provides information on the sales and use tax base, local sales and use taxes, exemptions and exclusions, obtaining a retail license, forms, and frequently asked questions.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/W. Hartley Powell

W. Hartley Powell, Director

September 18, 2018
Columbia, South Carolina



STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE

300A Outlet Pointe Blvd., Columbia, South Carolina 29210
P.O. Box 12265, Columbia, South Carolina 29211-9979
803-898-5130 FAX # 803-896-0171

June 21, 2017

Amazon.com Tax Department
Attn: Damian Hunt
P. O. Box 80416
Seattle, WA 98108-0416

Re: Department Determination
Amazon Services, LLC

Dear Mr. Hunt:

Enclosed is the South Carolina Department of Revenue's Determination in the above-referenced matter. If you disagree with the Determination, you may request a contested case hearing before an Administrative Law Judge. If you choose to pursue such remedy, you must do so within thirty (30) days of the date of this letter. If you fail to respond within this time limitation, you will lose your right to appeal the Department Determination and your protest will be ended. Should you desire a contested case hearing, you must complete the enclosed request form and mail it, along with a \$500.00 filing fee, to the Administrative Law Court at the address stated on the form's instruction sheet.

The Administrative Law Court rules require that you also send me a copy of your request.
My address is as follows: PO Box 12265, Columbia, SC 29211-9979.

Sincerely,

OFFICE OF GENERAL COUNSEL FOR LITIGATION

A handwritten signature in blue ink, reading "Lauren Acquaviva", is written over the typed name.

Lauren Acquaviva
Counsel for Litigation
Lauren.Aquaviva@dor.sc.gov
803-898-5110

Hearing
Exhibit
171

AS0140246

APP_01017

ROA_00999

DEPARTMENT DETERMINATION

Taxpayer:

Amazon Services, LLC
P.O. Box 81207
Seattle, WA 98108

Periods Involved:

Sales and Use Tax – January 1, 2016 through March 31, 2016

Matters in Dispute:

1. Is Amazon Services, LLC (“Taxpayer”) a person in the business of selling tangible personal property (“property”) at retail and, thus, subject to sales and use tax pursuant to S.C. Code Ann. §§ 12-36-910(A) and 12-36-1310(A) (2014)?
2. Did the South Carolina Department of Revenue (“Department”) properly include all the proceeds from the Taxpayer’s online sales in the tax base?

Amount in Dispute:

Tax:	\$ 9,576,549.12 ¹
Penalty:	\$ 2,394,137.28
Interest:	<u>\$ 519,815.75</u>
Total	\$12,490,502.15 ²

Determinations:

1. The Taxpayer is a person in the business of selling tangible personal property at retail and is subject to South Carolina’s sales and use tax.
2. The Department properly included all the proceeds from the Taxpayer’s online sales in the tax base.

Relevant Facts:

1. The Taxpayer is an affiliate of Amazon.com, Inc. (“Amazon”). Other relevant affiliates of Amazon include Amazon.com, LLC, Amazon Fulfillment Services, Inc. (“AFS”), and Amazon Payments, Inc. (“Amazon Payments”).

¹This is an estimated figure based on an agreement by the parties.

²The total for this quarter may change as interest and penalties are only calculated through July 18, 2017, and will continue to accrue until this matter is resolved.

2. Amazon.com, LLC is one of many Amazon affiliates whose property is offered for sale on www.amazon.com (the "Taxpayer's Website"). In other words, Amazon.com LLC supplies property to the Taxpayer to be sold on the Taxpayer's website. On January 1, 2016, Amazon.com, LLC began collecting and remitting sales tax to the Department.³
3. AFS has subsidiaries throughout the United States that own and operate Amazon's fulfillment centers. Amazon.com.dedc, LLC ("DEDC"), is the AFS subsidiary that owns and operates the fulfillment centers located in South Carolina.
4. Amazon Payments is the payment processing entity that the Taxpayer uses. Amazon Payments contracts with various merchant services providers and/or financial institutions in order to provide its payment-processing services.
5. The Taxpayer owns and operates the Taxpayer's Website. The Taxpayer enters into agreements with third parties and Amazon affiliates, such as Amazon.com, LLC, in order to offer various property for sale on the Taxpayer's Website. The agreements the Taxpayer enters into with third parties and Amazon affiliates are almost identical except for the fees.
6. The third parties are suppliers and/or consignors of tangible personal property, and the Taxpayer is the seller and/or consignee of tangible personal property. As the consignors, the third parties retain title to the property.
7. The Taxpayer contracts with AFS for fulfillment services. AFS's subsidiaries, such as DEDC, handle all the storing, packaging, and shipping of property held in AFS's fulfillment centers. AFS controls which fulfillment centers are used for the storage of products. Finally, the Taxpayer contracts with Amazon Payments to obtain payment-processing services for the Taxpayer's Website. The third parties and Amazon affiliates do not have agreements with AFS or Amazon Payments. They only have agreements with the Taxpayer.
8. When the Taxpayer's customer makes a purchase on the Taxpayer's Website, the customer enters his or her shipping address, billing address, and credit card information (collectively "customer order information") on the checkout page of the Taxpayer's Website. The Taxpayer holds that customer information while it processes the customer's order. The Taxpayer sends the customer an order confirmation email. When a customer purchases property that is held in an Amazon fulfillment center ("Fulfilled by Amazon" or "FBA"),

³Initially, based on the Department's understanding of the facts, the Department believed Amazon.com, LLC, was a South Carolina retailer and liable for sales and use tax on all sales made on the Taxpayer's Website. As the facts have been developing and continue to develop, the Department now questions whether Amazon.com, LLC, is liable for the sales and use tax at all or whether the Taxpayer is liable for the sales and use tax on all sales made on the Taxpayer's Website, including sales of property supplied by Amazon affiliates like Amazon.com, LLC. If, after discovery, the Department determines that the Taxpayer and not the Amazon affiliates, such as Amazon.com, LLC, is the proper taxpayer concerning all sales made on the Taxpayer's Website, the Department reserves the right to make adjustments as necessary.

the Taxpayer sends an automated message to AFS instructing AFS to ship the property to the customer. Once AFS ships the property to the customer, the Taxpayer charges the customer's credit card. When a customer purchases property that is held by a third party (the "Merchant Fulfillment Network" or "MFN"), the Taxpayer instructs the third party to ship the property to the customer. The Taxpayer then requires the third party to notify the Taxpayer when the third party ships the property to the customer. Once the Taxpayer receives notification from the third party that the property shipped, the Taxpayer charges the customer's credit card.

9. Some of the property is shipped to the Taxpayer's South Carolina customers from within the State and the remaining property is shipped to its South Carolina customers from outside of the State. When the property is shipped from outside the State, it usually is shipped directly to the customer without any participation from any local place of business of the Taxpayer, i.e., AFS's distribution warehouse.
10. After the Taxpayer charges the customer's credit card, the Taxpayer, via Amazon Payments, holds the funds and records the transaction in the third party's "seller account."⁴ While the Taxpayer is holding the funds, the Taxpayer may combine the funds with proceeds from other sales on the Taxpayer's Website, invest and earn interest on the funds, or use the funds for any other purpose permitted by law. Every two weeks (or more frequently at the Taxpayer's discretion), the Taxpayer sends the third party the third party's portion of the proceeds and the Taxpayer retains its portion. The third party's portion of the proceeds is the total sale proceeds less the Taxpayer's fees.⁵
11. For orders that are fulfilled by AFS, the Taxpayer determines the shipping and handling charges. For orders that are fulfilled via the Merchant Fulfillment Network, the third party determines the shipping and handling charges. However, the third party's charges for shipping and handling must remain within the parameters set by the Taxpayer.
12. The Taxpayer provides some level of customer service on all purchases from the Taxpayer's Website. On FBA orders, the Taxpayer handles all customer service. On MFN orders, the Taxpayer only handles customer service on payment related issues. Additionally, the Taxpayer provides the A-to-Z Guarantee Program wherein a customer can submit a claim related to his or her order on the Taxpayer's Website regardless of which entity fulfilled the order. Third parties are required to comply with the requirements of the A-to-Z Guarantee Program. Moreover, the third party is required to reimburse the Taxpayer the amount the customer paid the Taxpayer plus any associated fees if the claim made by the customer is not caused by one of the two situations covered by the Taxpayer.⁶

⁴"Seller account" is a term used by the Taxpayer.

⁵At this point, the Department is still not clear as to how money changes hands.

⁶Pursuant to the Taxpayer's Business Solutions Agreement, the third party is responsible for the costs of all returns, claims, chargebacks, and disputes except those caused by "(i) credit card fraud for which [the Taxpayer is] responsible under Section S-1.4; or (ii) [the Taxpayer's]

13. The Taxpayer determines the cancellation, return, and refund policy for all property sold on the Taxpayer's Website.
14. The Taxpayer restricts how a third party can use a purchaser's customer order information and any other data the third party acquires from the Taxpayer, Amazon, or an Amazon affiliate.
15. The Taxpayer requires that when a third party's property is offered for sale somewhere other than the Taxpayer's Website, the purchase price, terms of the offer, customer service, and product information on the Taxpayer's Website must be equal or better than that of any other store or website.
16. In 2011, AFS opened a fulfillment center in Lexington County, South Carolina. That same year, the South Carolina General Assembly passed the "Distribution Facility Sales Tax Exemption," which exempted retailers like the Taxpayer from collecting and remitting sales and use tax for a five-year period from January 1, 2011, through December 31, 2015. See S.C. Code Ann. § 12-36-2691 (2014). AFS later opened two more fulfillment centers in South Carolina – one in North Charleston and one in Spartanburg.
17. On January 1, 2016, the Taxpayer's duty to remit sales and use tax began. Shortly thereafter, the Department began receiving emails and phone calls from the Taxpayer's South Carolina customers who reported that "Amazon charged them sales tax on some purchases but not others."
18. On February 25, 2016, the Department emailed Amazon to start a discussion about Amazon's sales and use tax collection and remittance. During the discussions that followed, the Department learned that Amazon was treating sales of property supplied by Amazon affiliates differently from sales of property supplied by third parties. The Department also learned that Amazon believed Amazon.com, LLC, was liable for sales tax on sales of its property on the Taxpayer's Website, and that the Taxpayer merely provided a nontaxable service to the third parties.
19. On September 1, 2016, the Department mailed the Taxpayer a letter informing the Taxpayer that the Department would be conducting a sales and use tax audit of the Taxpayer's online sales for the periods from January 1, 2016, through March 31, 2016. The Department also issued the Taxpayer a Summons to Produce Records in order to help expedite the audit.
20. In November of 2016, the Department received a spreadsheet with summary data from the first quarter of 2016. The spreadsheet contains data regarding the Taxpayer's sales of property owned by third parties during that quarter. The spreadsheet also reflects tax collected by the Taxpayer on behalf of third parties and then remitted to those third parties.

failure to make [the] Order Information available as the same was received by [the Taxpayer] or resulting from address verification"

21. On November 15, 2016, the Department held a meeting with the Taxpayer and its counsel. The Taxpayer asked the Department to issue the proposed assessment based on the summary data in the above-referenced spreadsheet. As such, the parties agreed the Department would issue the proposed assessment based on estimated figures.
22. The Department used the spreadsheet to create a proposed assessment. On December 9, 2016, the Department sent the Taxpayer and its counsel the Proposed Assessment and the Explanation of Audit Assessments and Adjustments. The Proposed Assessment indicated that the Taxpayer owed \$9,830,759.19 in sales and use tax plus substantial understatement penalties and interest.
23. On March 9, 2017, the Taxpayer hand delivered its protest letter to the Department.
24. On March 22, 2017, the Department held a conference with the Taxpayer and its counsel to discuss the Proposed Assessment. The Taxpayer requested an adjustment to the Proposed Assessment because the Taxpayer included the "shipping count" in the spreadsheet it provided to the Department. The shipping count represented the total number of shipments made during the first quarter of 2016. The Department did not need such figure in making its calculation, but was not aware that such figure was included in the Total Net Activity. All the Department needed was the total shipping charges for the quarter, which were also included in the spreadsheet. Accordingly, the Taxpayer asked that the Department exclude the shipping count and recalculate the tax liability based on the adjusted Total Net Activity. The recalculation resulted in reducing the tax measure by \$3,631,571.43. Using a 7% sales and use tax rate (6% state rate plus an estimate 1% for local option sales tax), the tax liability was reduced by \$254,210.00. The Department agreed to make this adjustment. The Taxpayer's counsel also expressed some concerns about the accuracy of the local option taxes. The parties agreed that for purposes of the hearing, the Department would use a 7% tax rate, and that the local option taxes could be verified if necessary after a decision from the court. Finally, the Taxpayer asked about taxes that it collected on behalf of the third parties. The Department informed the Taxpayer that the Department did not give any credit for those collected taxes, but that the Department may need to make adjustments after a decision from the Court.
25. After the conference on March 22, 2017, the Department sent the Taxpayer and its counsel an Amended Proposed Assessment and Explanation of Audit Assessments and Adjustments. The Amended Proposed Assessment indicates the Taxpayer owes \$9,576,549.12 in sales and use tax plus substantial understatement penalties and interest.
26. On March 28, 2017, the file was forwarded to the Office of General Counsel for Litigation.

Analysis:

I. The Taxpayer is a person in the business of selling tangible personal property at retail and is subject to sales and use tax.

South Carolina has a Sales and Use Tax Act (the "Act"), which imposes sales and use tax on specific persons. See S.C. Code Ann. §§ 12-36-5 et seq. (2014). In determining whether a specific person is subject to sales or use tax in South Carolina, it is important to read the Act as a whole. See *TNS Mills, Inc. v. South Carolina Dept. of Revenue*, 503 S.E.2d 471, 476, 331 S.C. 611, 620 (1998); *Higgins v. State*, 307 S.C. 446, 449, 415 S.E.2d 799, 801 (1992) ("In construing statutory language, the statute must be read as a whole, and sections which are part of the same general statutory law must be construed together and each one given effect, if it can be done by any reasonable construction."). Under South Carolina law, "[a] sales tax, equal to [six]⁷ percent of the gross proceeds of sales, is imposed upon every person⁸ engaged or continuing within this State in the business⁹ of selling tangible personal property¹⁰ at retail" and is not limited to tangible personal property owned by the person/retailer. Section 12-36-910(A). Additionally, § 12-36-1310(A) imposes a use tax on "the storage, use, or other consumption in this State of tangible personal property purchased at retail for storage, use, or other consumption in this State" However, S.C. Code Ann. §§ 12-36-1340 and 12-36-1350 (2014) impose the responsibility of collecting and remitting the use tax on the retail seller who maintains a place of business in this State.¹¹ Thus, if the Taxpayer is a retail seller who maintains a place of business in this State, then the Taxpayer is responsible for remitting the sales and use tax.

The definition of "retailer" and "seller" includes every person "selling or auctioning tangible personal property whether owned by the person or others." S.C. Code Ann. § 12-36-70(1)(a)

⁷S.C. Code Ann. § 12-36-1110 (2014) imposes an additional one percent sales and use tax.

⁸Under the Act, the term "person" includes "any individual, firm, partnership, limited liability company, association, corporation, receiver, trustee, any group or combination acting as a unit, the State, any state agency, any instrumentality, authority, political subdivision, or municipality." S.C. Code Ann. § 12-36-30 (2014).

⁹Under the Act, the term "business" includes "all activities, with the object of gain, profit, benefit, or advantage, either direct or indirect." S.C. Code Ann. § 12-36-20 (2014).

¹⁰Under the Act, the term "tangible personal property" is defined as "personal property which may be seen, weighed, measured, felt, touched, or which is in any other manner perceptible to the senses." S.C. Code Ann. § 12-36-60 (2014).

¹¹"Retailer maintaining a place of business in this State, or any similar term, includes any retailer having or maintaining within this State, directly or by a subsidiary, an office, distribution house, sales house, warehouse or other place of business, or any agent operating within this State under the authority of the retailer or its subsidiary, regardless of whether the business or agent is located here permanently or temporarily or whether the retailer or subsidiary is admitted to do business within this State." S.C. Code Ann. § 12-36-80 (2014).

(2014).¹² In addition, the term "gross proceeds of sales," which will be discussed in more detail under section II, includes proceeds from the sale of tangible personal property sold on consignment. See S.C. Code Ann. § 12-36-90(1)(a) (2014). "Sale at retail" and "retail sale" generally is a sale, not for resale, to the user or consumer of the tangible personal property. See S.C. Code Ann. § 12-36-110 (defining "sale at retail" and "retail sale") and § 12-36-120 (2014) (defining "wholesale sale"). Finally, "sale" means "any transfer, exchange, or barter, conditional or otherwise, of tangible personal property for a consideration . . ." S.C. Code Ann. § 12-36-100 (2014). Thus, reading the Act as a whole, a person in the business of transferring tangible personal property to its user or consumer in South Carolina for a consideration, regardless of whether that person owns or physically possesses such property, is responsible for sales and use tax.

The Taxpayer in this case operates a business where it offers for sale property owned by its affiliates or third parties on the Taxpayer's Website to users or consumers of the property in South Carolina. Some of the property is shipped to the Taxpayer's South Carolina customers from within the State and the remaining property is shipped to its South Carolina customers from outside of the State. When the property is shipped from outside the State, it usually is shipped directly to the customer without any participation from any local place of business of the Taxpayer. The Taxpayer does not dispute that tangible personal property is sold at retail on the Taxpayer's Website to users or consumers in South Carolina.¹³ Rather, the Taxpayer disputes *who* sells the tangible personal property on the Taxpayer's Website. Thus, the primary issue in this case is whether the *Taxpayer* sells tangible personal property on the Taxpayer's Website.

As will be discussed in more detail below, the totality of the Taxpayer's activities clearly demonstrates that the Taxpayer is in the "business of selling tangible personal property at retail" within the meaning of § 12-36-910(A). The Taxpayer hosts the Taxpayer's Website so its customers can select from a variety of items. The Taxpayer controls to whom and to where the property is sent and effects the actual transfer of the property to its customers. The Taxpayer accepts payment for said property and holds the funds in "escrow" for later disbursement of a

¹²For example, S.C. Code Ann. Regs. 117-319 (2012) provides, in part:

When, however, warehousemen buy and sell property as a regular course of business such sales, if not otherwise exempted, are subject to the sales tax, **including sales of goods held on consignment and including transactions in which the warehouseman acts as a broker selling goods not actually owned by him or in his possession at the time he accepts the order.**

(Emphasis added). This regulation demonstrates just how broad a reach the Act has, such that even persons who do not own or possess the tangible personal property are liable for sales and use tax on their sale of such property.

¹³If the Department's understanding as to the nature of the dispute is incorrect, please inform the Department in writing prior to requesting a contested case hearing so the Department can issue an amended Department Determination addressing all of the disputed issues. If you fail to inform the Department of any additional issues, such additional issues, if any, will be deemed abandoned.

portion of the funds to third parties. Finally, the Taxpayer exercises controls over transaction details such as customer service and returns. Therefore, the Taxpayer is liable for sales and use tax as a South Carolina retailer.

A. A plain reading of Section 12-36-100 demonstrates the Taxpayer sells tangible personal property on the Taxpayer's Website.

The Taxpayer sells tangible personal property on the Taxpayer's Website. Specifically, for a sale to take place, as defined by the Act, there must be (1) a transfer of tangible personal property (2) for a consideration. See § 12-36-100. Section 12-36-100 is very broad and includes *any* transfer. In International Harvester Co. v. Wasson, 281 S.C. 458, 460, 316 S.E.2d 378, 379 (1984), the South Carolina Supreme Court examined the definition of "sale." In doing so, the Court stated "if the transfer of the [tangible personal property], i.e., delivery, took place in South Carolina, the sale would take place in this State." Id. The Court did not mention physical possession in its analysis. Id. Notably, Black's Law Dictionary defines the term "transfer" as "[t]o convey or remove from one place or one person to another." Black's Law Dictionary, 729 (3d. Pocket Ed. 2006). Accordingly, any type of transfer for a consideration, whether it be on consignment, via drop shipment, or in some other way by direction of the retailer, constitutes a sale.

Here, once a customer places an order on the Taxpayer's Website, the Taxpayer transfers the property to the customer by directing either AFS or a third party to ship said property. This method of transferring property is akin to a drop shipment and/or consignment sale. Accordingly, the facts demonstrate that the Taxpayer transfers the property, satisfying the first element of a sale. Next, the Taxpayer only directs shipment of the property after it receives payment from the customer. As such, the Taxpayer receives a consideration in exchange for it transferring the property. Specifically, when a customer places his or her order on the Taxpayer's Website, the customer provides the Taxpayer with his or her billing information. The Taxpayer holds the customer's billing information until the property is shipped. Once the property is shipped, the Taxpayer charges the customer's credit card and receives payment. After the Taxpayer charges the customer's credit card, the Taxpayer holds the funds. In instances when a third party supplies the property,¹⁴ the Taxpayer records the transaction in the third party's "seller account." Every two weeks, the Taxpayer sends the third party its proceeds, which is the total sales proceeds less the Taxpayer's fees. As such, the Taxpayer receives a consideration, satisfying the second and final element of a sale. Accordingly, since the Taxpayer receives money from its customer – a consideration – in exchange for the Taxpayer transferring tangible personal property to the customer, the Taxpayer sells tangible personal property in South Carolina via the Taxpayer's Website.

Additionally, § 12-36-100 provides some examples of what constitutes a sale. Specifically, § 12-36-100(4) provides that a transfer of possession for a consideration constitutes a sale. The Act, however, does not include a definition of the term "possession". The South Carolina Supreme Court has stated "[w]hen faced with an undefined statutory term, the Court must interpret the term in accordance with its usual and customary meaning." Travelscape, LLC v. S.C. Dept. of Revenue,

¹⁴At this time, the Department does not know how money changes hands when an Amazon affiliate, such as Amazon.com, LLC, supplies the property.

391 S.C. 89, 99, 705 S.E.2d 28, 33 (2011) (internal citation omitted). In its usual and customary meaning, possession can be actual or constructive. See Black's Law Dictionary, 546 – 547 (3d, Pocket Ed. 2006) (defining "possession" as "something that a person owns [actual possession] or controls [constructive possession].") The Black's Law Dictionary defines actual possession as "[p]hysical occupancy or control over property" and constructive possession as "[c]ontrol or dominion over a property without actual possession or custody of it." Id. Thus, the first element of a "sale" can also be satisfied if the Taxpayer has either physical possession/control over the tangible personal property or control over tangible personal property without physical possession of it. This is consistent with, when reading the Act as a whole, the provisions of the imposition statute, the inclusion of consignment sales in the definition of gross proceeds of sales, and the definition of retailer.

As stated above, the Taxpayer transfers property to its customer after the customer places an order on the Taxpayer's Website. The Taxpayer uses two different means of transferring tangible personal property to its customers: (1) AFS fulfills some orders and (2) third parties fulfill the other orders. When AFS fulfills the order, AFS stores the property at one of its fulfillment centers. Once a customer places an order with the Taxpayer, the Taxpayer instructs AFS to ship the property to the customer. Thus, even though AFS fulfills the order, the Taxpayer has control over the property. The Taxpayer controls when the property is shipped and who receives the property. AFS simply follows the Taxpayer's instructions, but the Taxpayer is who has control over and transfers the property. AFS cannot fulfill an order without instruction from the Taxpayer. As such, the Taxpayer has physical control of the tangible personal property and maintains such control until it transfers possession of the property to its customer.

Similarly, when a third party fulfills the order, the third party stores the property. Once a customer places an order with the Taxpayer, the Taxpayer instructs the third party to ship the property to the customer. Thus, when a third party fulfills the order, the Taxpayer has control or dominion over the property without actual possession or custody of it. As such, the Taxpayer is who transfers the property to its customer. Accordingly, whether AFS or a third party fulfills the sales order, the Taxpayer has either actual physical possession of the tangible personal property or sufficient control over the tangible personal property to constructively possess the same and transfers such possession to its customer. Thus, the Taxpayer sells tangible personal property on the Taxpayer's Website.

B. South Carolina case law supports the conclusion that the Taxpayer is engaged in the business of selling tangible personal property at retail and is subject to sales and use tax.

Our Supreme Court examined a similar issue in Travelscape, LLC v. S.C. Dept. of Revenue, 391 S.C. 89, 705 S.E.2d 28 (2011). Specifically, the Travelscape Court examined the "engaged in the business of" language and the undefined term "furnish" found in S.C. Code Ann. § 12-36-920(E) (2014). Similar to § 12-36-910(A), which imposes a sales tax on "every person engaged . . . in the business of [transferring] tangible personal property [for a consideration]," § 12-36-920(E) imposes an accommodations tax "on every person engaged or continuing within this State in the business of furnishing accommodations to transients for consideration." (emphasis added). The term "transfer" is not defined in the Act. Similarly, the term "furnish" or "furnishing" is not

defined in the Act. In construing the undefined term “furnish,” the Travelscape Court stated that the meaning of an undefined term should be construed “in conjunction with the whole purpose of the statute and the policy of the law.” 391 S.C. at 99, 705 S.E.2d at 33. In doing so, the Court determined the term “furnish” must be read in light of the “engaged in the business of” language in the statute. The Travelscape Court reasoned as follows:

As used in subsection (E), “furnish” does mean to physically provide sleeping accommodations. However, Travelscape’s argument ignores the antecedent language in (E) that it applies to all persons “engaged ... in the business of” furnishing accommodations. “Business” includes “all activities, with the object of gain, profit, benefit, or advantage, either direct or indirect.” S.C. Code Ann. § 12-36-20 (2000). Accordingly, we find the context of “furnish” as it appears in subsection (E) demonstrates that it encompasses the activities of entities such as Travelscape who, whether directly or indirectly, provide hotel reservations to transients for consideration. . . . [W]e interpret subsection (E) in such a manner as to give effect to all the language contained therein—particularly that the entity be “engaged ... in the business of” furnishing accommodations—rather than focusing on the term “furnish” in isolation. While Travelscape does not physically provide accommodations, it is in the business of doing so.

391 S.C. at 101, 705 S.E.2d at 34. The Travelscape Court went on to explain that “[t]he application of the tax to ‘every person engaged ... in the business of furnishing accommodations’ also reveals that the legislature intended to levy the tax not merely on those physically providing sleeping accommodations, but on those entities who were accepting money in exchange for supplying hotel rooms.” *Id.* (emphasis added).

The language in § 12-36-910(A) is substantively identical to the language in § 12-36-920(E), therefore the Court’s analysis in Travelscape is instructive here. Like the taxpayer in Travelscape, the Taxpayer argues that since it does not have physical possession of the property, it cannot transfer the property and, thus, cannot be selling the property. However, the term “transfer,” like the term “furnish,” is not defined in the Act. Moreover, § 12-36-100 does not limit the definition of sale to a transfer of possession. Rather the statute is broad and includes any type of transfer, the transfer of possession being just one example. Therefore, in determining the meaning of the term “transfer” in the Act, the term should be construed in conjunction with the whole purpose of the statute and the policy of the law in the same way the Travelscape Court construed the term “furnish.” 391 S.C. at 99, 705 S.E.2d at 33. Applying the Travelscape Court’s reasoning to construe the term “transfer” demonstrates that the Legislature intended to levy a sales tax on the Taxpayer regardless of whether the Taxpayer has actual or constructive possession of the property because the Taxpayer accepts money in exchange for supplying/conveying/delivering property to its customers. Accordingly, the application of the statutes at issue combined with the Court’s reasoning in Travelscape demonstrate that South Carolina’s Sales and Use Tax Act has a broad reach and that the Taxpayer is a person engaged in the business of selling tangible personal property at retail.

II. The Department properly included all the proceeds from the Taxpayer's online sales in the tax base.

All retailers must collect and remit sales tax on their gross proceeds of sales. See § 12-36-910(A). "Gross proceeds of sales" is defined as:

[T]he value proceeding or accruing from the sale, lease, or rental of tangible personal property.

(1) The term includes:

- (a) the proceeds from the sale of property sold on consignment by the taxpayer;
- (b) the proceeds from the sale of tangible personal property without any deduction for [various expenses].

S.C. Code Ann. § 12-36-90 (2014). The Administrative Law Court (ALC) looked at § 12-36-90(1)(a) in the Travelscape case. See Travelscape, LLC v. S.C. Dept. of Revenue, 08-ALJ-17-0076-CC, 2009 WL 769017 at *22 fn 15 (S.C. Admin. Law Ct. Feb. 12, 2009). In doing so, the ALC explained:

In a consignment sale, the owner of tangible personal property allows a third party to sell the property. At the time of sale, the third party collects and remits sales tax on the gross proceeds of its retail sale to customers, retains its fee as compensation and then pays the owner for the property. The total amount received for the sale is subject to sales tax without any deduction for labor costs.

Id. Moreover, our Supreme Court in Travelscape examined § 12-36-90(1) and explained that a taxpayer is liable for tax on the entire amount received by the seller, to include the fees retained by the seller for its services. Travelscape, 391 S.C. at 98, 705 S.E.2d at 33. Accordingly, the Taxpayer, as a retailer who operates like a consignment store, must remit sales tax on all sales and on the entire value of each sale, including its retained fees, and cannot deduct its expenses.

Additionally, a retail seller who maintains a place of business in this State is responsible for collecting and remitting the use tax at a rate of six percent of the sales price. See §§ 12-36-1310, 12-36-1340, and 12-36-1350. "Sales price" is defined as "the total amount for which tangible personal property is sold, without any deduction for [various] expenses." S.C. Code Ann. § 12-36-140. Thus, just like with the sales tax, the Taxpayer must remit use tax on all sales and on the entire value of each sale, including its retained fees, and cannot deduct its expenses.

Here, the Taxpayer sells property owned by its affiliates or third parties through the Taxpayer's Website. The Taxpayer does not own any of the property it sells; rather, the Taxpayer sells property that is owned by others – a consignment sale. The Taxpayer receives the proceeds from the sale then the Taxpayer remits to the third party that party's share of the proceeds. However, because the Taxpayer must remit sales tax on the entire value of the sale, the Taxpayer must remit

sales and use tax on the entire amount the Taxpayer collects from its customers. Accordingly, because the Taxpayer sells the tangible personal property on the Taxpayer's Website, the Department properly included all the proceeds from the Taxpayer's online sales in the tax base.¹⁵

III. The Taxpayer's arguments are not persuasive.

A. The Department has sufficient nexus with the Taxpayer, and therefore, the Proposed Assessment does not violate the Due Process and dormant Commerce Clauses of the U.S. Constitution.

First, the Taxpayer argues that the Proposed Assessment violates the Due Process Clause because the Taxpayer "did not direct purposeful contact with the state when it provided services to the Merchants situated in states other than South Carolina . . ." Taxpayer's Protest Ltr. at p. 46. The Taxpayer, however, mischaracterizes itself as a service provider and ignores the fact that it is deemed the seller by South Carolina law, as discussed above. Accordingly, when the Taxpayer sold property to its South Carolina customers, it directed purposeful contact with South Carolina. Thus, the Department has sufficient nexus with the Taxpayer to satisfy the Due Process Clause.

Second, the Taxpayer appears to argue that the Proposed Assessment violates the dormant Commerce Clause because the Taxpayer does not have a physical presence in South Carolina. However, AFS, an affiliate of the Taxpayer, has three distribution centers in South Carolina. Commerce Clause nexus may be established through an agent performing activities on behalf of a taxpayer that help the taxpayer establish and maintain a market in the taxing state. See e.g., New Mexico Taxation and Revenue Dep't v. Barnesandnoble.com LLC, 303 P.3d 824 (relying on Tyler Pipe Industries, Inc. v. Washington State Dep't of Revenue, 483 U.S. 232 (1987)). AFS's distribution centers help the Taxpayer establish and maintain a market in South Carolina and throughout the world. Accordingly, the Taxpayer has a physical presence in South Carolina. Because the Taxpayer has a physical presence in South Carolina, the Proposed Assessment does not violate the dormant Commerce Clause.

B. The Taxpayer had fair notice that its selling activities within South Carolina subjected the Taxpayer to South Carolina's taxing jurisdiction.

The Taxpayer also argues that South Carolina did not give it fair warning that its actions may be subject to South Carolina's taxing jurisdiction. Here again, the Taxpayer mischaracterizes itself as a service provider rather than a seller of tangible personal property. Because the Taxpayer is deemed the seller by South Carolina law, the Taxpayer had fair warning that its sales of tangible personal property in South Carolina subjected it to South Carolina's taxing jurisdiction. Moreover, the passage of § 12-36-2691, which gave the Taxpayer a five year moratorium on collecting and remitting sales and use tax, put the Taxpayer on notice that it was a retailer subject to South Carolina sales and use tax on all sales transactions that took place on the Taxpayer's Website beginning on January 1, 2016. As such, not only did the Taxpayer have fair notice that its selling

¹⁵Again, the Department did not include the proceeds derived from the sale of tangible personal property supplied by the Taxpayer's affiliates based on the original information Amazon and its affiliates provided to the Department. As the facts in this case develop further, the Department reserves the right to make adjustments as necessary.

activities in South Carolina subjected it to South Carolina's taxing jurisdiction, but it had five years to prepare for its sales and use tax collection obligation.

Additionally, the Taxpayer appears to believe that the Department is imposing an obligation on the Taxpayer to collect and remit sales and use tax on behalf of the third parties. This is not the case. As explained above, the Taxpayer, just like a consignee, is the seller and the legally liable taxpayer for the sales and use taxes due on items sold on the Taxpayer's Website.

C. The Proposed Assessment does not violate the Internet Tax Freedom Act.

Finally, the Taxpayer argues that the Proposed Assessment violates the Internet Tax Freedom Act (ITFA) (47 U.S.C. 151 note). Specifically, the Taxpayer argues that the Proposed Assessment constitutes a discriminatory tax per the ITFA. Section 1105(2) of the ITFA defines a discriminatory tax, in part, as follows:

(A) any tax imposed by a State or political subdivision thereof on electronic commerce that-

(i) is not generally imposed and legally collectible by such State or such political subdivision on transactions involving similar property, goods, services, or information accomplished through other means;

* * *

(iii) imposes an obligation to collect or pay the tax on a different person or entity than in the case of transactions involving similar property, goods, services, or information accomplished through other means.

First, the Taxpayer argues that the Proposed Assessment is discriminatory pursuant to ITFA § 1105(2)(A)(i) because "it taxes sales that would not be taxed if they were accomplished through traditional commerce." Taxpayer's Protest Ltr. at p. 49. This argument is without merit. While the Taxpayer likes to compare itself to a shopping mall that is not responsible for collecting sales and use tax, the Taxpayer is actually a consignment store that is responsible for collecting sales and use tax. The Taxpayer, like a consignee, offers property for sale that belongs to third parties/consignors. The Taxpayer, like a consignee, receives payment from the customer and passes the third party/consignor's portion on to the third party in two-week intervals. Finally, the Taxpayer, like a consignee, transfers the property to the customer. The sales and use tax applies to the Taxpayer the same way it applies to a consignee who has a brick and mortar store. As such, the Taxpayer's sales would still be taxed if such sales were accomplished through other means. Therefore, ITFA § 1105(2)(A)(i) does not apply here.

Second, the Taxpayer argues that the Proposed Assessment is discriminatory pursuant to ITFA § 1105(2)(A)(iii) because it "shift[s] the tax obligation" from the third party to the Taxpayer. Taxpayer's Protest Ltr. at p. 49. As explained above, because the Taxpayer is the retailer in these transactions operating like a consignee and South Carolina law imposes a sales and use tax on the consignee, the Proposed Assessment does not shift the tax obligation. Rather, it is the Taxpayer

who would like the Department to shift the tax obligation from the Taxpayer to the third parties. As such, ITFA § 1105(2)(A)(iii) does not apply here.

Finally, the Taxpayer argues that the ITFA prohibits taxing transactions that are unique to the internet. See Taxpayer's Protest Ltr. at p. 50. The Taxpayer cites H.R. Rep. No. 105-570 (1998) in support of this proposition. Id. The relevant portions of H.R. Rep. No. 105-570 (1998) provide as follows:

No taxes on Internet-unique services

Taken together, [Section 1105(2)(A)(i) and (ii)] mean that property, goods, services, or information that are sold exclusively over the Internet--**with no comparable off-line equivalent**--would be protected from taxation for the duration of the moratorium. Examples of such transactions include, but are not limited to, electronic mail over the Internet, Internet site selections, Internet bulletin boards, and Internet search services.

No new collection obligations

[Section 1105(2)(A)(iii)] states that a tax on electronic commerce is discriminatory if it imposes an obligation to collect or pay a tax on a different person or entity than in the case of transactions involving similar property, goods, services, or information accomplished through other means, such as over the telephone or via mail-order. **For instance, a tax does not discriminate against electronic commerce if the obligation to collect and remit the tax falls on the vendor if the same goods were ordered off-line as well as online.** This provision would also bar taxes that seek in the case of electronic commerce to impose tax collection obligations on persons other than the buyer or seller in a transaction. Specifically, it would bar taxes that impose collection or reporting duties on Internet access or online service providers, telephone companies, banks, credit card companies, financial intermediaries, or other entities that might have access to a consumer's billing address since these obligations do not also apply in the case of telephone or mail-order sales.

(Emphasis added). Here again, the transactions that occur on the Taxpayer's Website are not unique to the internet. The same types of transactions occur every day in consignment stores. Accordingly, because a comparable off-line equivalent exists, the Proposed Assessment does not violate the ITFA. Additionally, whether a customer orders the property online from the Taxpayer or purchases the property off-line from a consignment store, the tax obligation still falls on the South Carolina retailer. The Taxpayer is a consignee and the South Carolina retailer in this case just as a consignee is the South Carolina retailer for purposes of transactions that occur at a brick

and mortar consignment store. Accordingly, the Proposed Assessment does not constitute a discriminatory tax pursuant to the ITFA.

Conclusion:

For all of the foregoing reasons, the Taxpayer is a person in the business of selling tangible personal property at retail, and the Department properly included all the proceeds from the Taxpayer's online sales in the tax base.

June 21, 2017



STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE
Audit Appointment

AS-5
(Rev. 10/21/15)
6375

Entity:
Amazon Services, LLC

File Numbers:
102252599

Amazon Services, LLC
Attn: Jim Jackson, Senior Tax Manager
PO Box 81207
Seattle, WA 98108-1207

Date Issued: 9/01/2016

Mr. Jackson:

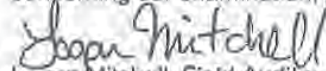
Your Sales and Use Tax returns for the periods 01/01/2016 through 3/31/2016 have been assigned to me for a Sales and Use Tax Audit.

In order to expedite this examination, provide all of the requested information below at the commencement of the audit. The information listed below is requested for sales and/or deliveries made to South Carolina customers.

- Copies of all documents and/or records related to sales transactions, unrelated to Amazon.com LLC, where products are purchased through the Amazon.com website and fulfilled by any Amazon fulfillment service entities (for example Amazon.com DEDC, LLC). Please include the name of the purchaser and the address to where the products were shipped.
- Copies of all documents and/or records related to sales transactions, unrelated to Amazon.com LLC, where products are purchased through the Amazon.com website and not fulfilled by any Amazon fulfillment services entities. Please include the name of the purchaser and the address to where the products were shipped.
- Copies of all documents and/or records related to sales transactions where products are not purchased on Amazon.com but are paid for with Amazon Marketplace/Amazon Payment/Amazon Account and fulfilled by any Amazon fulfillment service entities.
- Copies of documents and/or records related to agreements between Amazon Services, LLC and anyone using Amazon.com, excluding Amazon.com LLC, to market and sell products.

South Carolina Department of Revenue has developed a Computer Assisted Auditing System for when a taxpayer provides records in an electronic format. Our software program can read virtually any file format or record type. Attached is a Computer Assisted Audit System brochure, which provides more information. You are asked to complete and return the attached Computer Assisted Audit Questionnaire (form CAA-90) within ten days from the receipt of this letter.

South Carolina Department of Revenue believes all taxpayer should be aware of their rights. I am enclosing a Tax Guide which summarizes the South Carolina Taxpayers' Bill of Rights. If you have any questions concerning our examination, please write or telephone me within ten days from the date of this letter.


Logan Mitchell, Field Auditor
Email: Logan.Mitchell@dor.sc.gov
Phone Number: (803)898-5908
Fax: (803)896-0130
300 Outlet Pointe Blvd., Columbia, South Carolina 29210

Hearing
Exhibit
172



STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE
**SUMMONS TO PRODUCE
RECORDS**

FS-24

TO: Amazon Services, LLC

In responding to this Summons ("Summons") you are required to make a diligent search of all records and documents that are in your possession, custody, or control. This includes documents in the possession of attorneys, accountants, affiliates, advisors, representatives, or others directly or indirectly employed by you, hired by you, or in any way connected with you or your representatives, and anyone else otherwise subject to your control.

The term "document" or "record" as used in this Summons is any writing or recording as defined under Rule 1001(1) of the South Carolina Rules of Evidence, including, but not limited to all correspondence, telexes, telegrams, emails, notes, papers, financial records, ledgers, bank or other account statements, cancelled checks, bills, invoices, statements, receipts, carbon copies, deeds, notes, mortgages, assignments, certificates of title, bills of sale, stock certificates, bonds, certificates of deposit, any document evidencing ownership or any interest in any real or personal property or right to property whether it be tangible or intangible, financial statements, balance sheets, income statements, statement of cash flows, bills of lading, certificates of origin, commercial invoices, packing lists, memoranda, agreements, contracts, memoranda of understandings, corporate records, resolutions, meeting minutes or agenda, newsletters, studies, graphs, diagrams, photographs, charts, projections, tabulations, analyses, questionnaires and responses, work papers, summaries, data sheets, reports, statistical or other informational accumulations, data processing cards or worksheets, computer stored and generated documents, computer databases, computer tapes, disks, CD's and DVD's, electronic files or records, including electronic mail, and similar or related documents and materials.

Each Summons Request should be separately answered. If a document has any change, notation, and/or modification, you are required to produce it. Each non-identical copy is a separate "document" and must be produced.

Please note that any failure to comply with this Summons may result in you being held in contempt by the S.C. Administrative Law Court.

Documents to be Produced

You are hereby summoned to produce the below specified documents and records for the period of 1/01/2016 – 3/31/2016:

- Copies of all documents and/or records related to sales transactions, unrelated to Amazon.com LLC, where products are purchased through the Amazon.com website and fulfilled by any Amazon fulfillment service entities (for example Amazon.com DEDC, LLC). Please include the name of the purchaser and the address to where the products were shipped.
- Copies of all documents and/or records related to sales transactions, unrelated to Amazon.com LLC, where products are purchased through the Amazon.com website and not fulfilled by any Amazon fulfillment services entities. Please include the name of the purchaser and the address to where the products were shipped.
- Copies of all documents and/or records related to sales transactions where products are not purchased on Amazon.com but are paid for with Amazon Marketplace/Amazon Payment/Amazon Account and fulfilled by any Amazon fulfillment service entities.
- Copies of documents and/or records related to agreements between Amazon Services, LLC and anyone using Amazon.com, excluding Amazon.com LLC, to market and sell products.

Records may be submitted electronically to Logan.Mitchell@dor.sc.gov.

Please note that failure to comply with this Summons may result in contempt proceedings under SC Code §12-54-110.

Place and Time for production:

AT: 300A Outlet Pointe Blvd., Columbia, SC 29210

on Monday, the 3rd day of October, 2016.

THIS SUMMONS IS ISSUED UNDER THE AUTHORITY OF SECTION 12-4-330 and SECTION 12-54-110, CODE OF LAWS OF SOUTH CAROLINA, 1976, AS AMENDED. FAILURE TO COMPLY WITH THIS SUMMONS MAY RESULT IN YOU BEING HELD IN CONTEMPT OF COURT.

If you have any questions regarding this administrative summons, please contact:

Logan Mitchell, Auditor
300A Outlet Pointe Blvd.
Columbia, SC 29210
(803) 898-5908
Logan.Mitchell@dor.sc.gov

SOUTH CAROLINA DEPARTMENT OF REVENUE

Administrator


Susie Shytle or Rodger Watson, Audit Supervisor
Columbia District

1350



STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE
Proposed Assessment

AS-6
(Rev. 11/10/16)
6376

File Number: 102252599
Letter ID: L0002238455
Date Issued: December 09, 2016

TAX DEPT.
AMAZON SERVICES LLC
PO BOX 81207
SEATTLE WA 98108-1207

Taxpayer:

A Sales & Use Audit of your South Carolina Sales and Use Tax return(s) from 01/01/2016 to 03/31/2016 has been conducted. Enclosed you will find an explanation of our **Proposed Assessment**. Below is a summary of our findings if paid by 01/09/2017:

Tax:	\$9,830,759.19
Penalty:	\$2,457,689.80
Interest:	\$295,608.60
Prepayments:	(\$0.00)
Total:	\$12,584,057.59

Failure to respond to this notice by 03/09/2017 will result in the accrual of additional penalties and/or interest, and further collection action will be taken. Please refer to the reverse side for instructions on how to proceed. Should you have any questions, please do not hesitate to contact this office.

Logan Mitchell

LOGAN MITCHELL, Field Audit
Email: Logan.Mitchell@dor.sc.gov, Phone: +1 (803) 898-5908, Fax: +1 (803) 896-0020
300A Outlet Pointe Blvd, Columbia, South Carolina 29210

**Hearing
Exhibit
175**

This demand for payment is not applicable if you are currently in bankruptcy proceedings under Title 11 of the U.S. Code. Any monies due will be sought in accordance with the provisions of Title 11.

----- cut along dotted line -----

1350



SC DEPARTMENT OF REVENUE
Audit Payment

C-370
(Rev. 08/31/15)
6370

Pay online for free at MyDORWAY.dor.sc.gov.

Vouchers and payments may also be mailed to:

South Carolina Department of Revenue
P O Box 125
Columbia, SC 29214-0030

Media 137479665
File Number 102252599

Amount Due \$12,584,057.59

Balance Remitted

63701015 01 000137479665 00 00 00000000 01258405759

2

APP_01036

ROA_01018

If you agree with the changes detailed on this notice and any enclosed explanations, the balance should be remitted to this office within 30 days from the issue date of this letter to avoid additional penalties and interest, if applicable. To pay by check, please mail your payment **and the voucher** from the front page as addressed on the voucher to ensure proper processing.

If you agree with the Department's determination, but are unable to make full payment at this time, please complete the enclosed Waiver of Restriction on Assessment (SC870) and return it to this office as soon as possible. Upon receipt of this document, a final assessment will be issued.

You may agree with portions of the proposed assessment and disagree with others. The portion of the assessment with which you agree may be paid to avoid additional interest and penalty, and the remainder can be appealed.

If you disagree with part or all of the proposed assessment, you may make an appeal by sending a written protest within **90 days** from the date of this proposed assessment.

Protest forms (C-245) are available online at www.dor.sc.gov, by calling (803) 898-5320 or you may visit any South Carolina Department of Revenue office. You may choose to send a letter rather than using the Form C-245. The letter must contain the following information:

1. Taxpayer's name (individual, corporation, etc.)
2. Taxpayer's identification number (Social Security, Federal Employer Identification, License, etc.)
3. Period for which the tax is proposed
4. Type of tax in dispute (individual income, sales, etc.)
5. All of the reasons you disagree with the proposed assessment

If you have any questions, please call the telephone number shown on the front of this proposed assessment.

TAXPAYER'S BILL OF RIGHTS

- You have the right to apply for assistance from the Taxpayer Rights' Advocate within the Department of Revenue. The advocate or his designee is responsible for facilitating resolution of taxpayer complaints and problems.
- You have the right to request and receive forms, instructions and other written materials in plain, easy-to-understand language.
- You have the right to prompt, courteous service from us in all your dealings with the Department of Revenue.
- You have the right to request and receive written information guides, which explain in simple and nontechnical language, appeal procedures and your remedies as a taxpayer.
- You have the right to receive notices which contain descriptions of the basis for and identification of amounts of any tax, interest and penalties due.

COVINGTON & BURLING LLP

March 9, 2017

VIA HAND DELIVERY

Mr. Ricky Taylor
SC Department of Revenue
300A Outlet Pointe Blvd.
Columbia, SC 29210

Re: Protest to Proposed Notice of Assessment Issued to Amazon Services LLC for the
Tax Period January 1, 2016, through March 31, 2016
File No. 102252599

Dear Mr. Taylor:

Amazon Services LLC (“Amazon Services”) respectfully protests the adjustments set forth in the December 9, 2016 Proposed Notice of Assessment (the “Notice”) with respect to Amazon Services’s sales and use taxes for the period January 1, 2016, through March 31, 2016. A copy of the Power of Attorney (Form SC2848) authorizing representation of Amazon Services by the undersigned is attached as Attachment 1. Amazon Services respectfully requests a conference with the South Carolina Department of Revenue on this matter in the next 30-60 days.

Name and Address of Taxpayer

Amazon Services LLC
PO Box 81207
Seattle, WA 98108-1207

File/Audit Identification Numbers

File No. 102252599

**Hearing
Exhibit
178**

Tax Period at Issue

January 1, 2016, through March 31, 2016

Nature and Kind of Tax in Dispute

Sales and Use Tax

As set forth in detail below, Amazon Services contests the proposed adjustments with respect to its reporting, collection, and remittance of South Carolina sales and use taxes. The Notice also contains computational errors, not all of which are discussed in this protest, and which Amazon Services reserves the right to address further if necessary.

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I. EXECUTIVE SUMMARY

In South Carolina, sales taxes are imposed only upon persons that sell tangible personal property within the state. S.C. Code Ann. § 12-36-910. A sale is defined, in relevant part, as “any transfer, exchange, or barter, conditional or otherwise, of tangible personal property for a consideration including . . . a transfer of title or possession, or both.” *Id.* § 12-36-100.

Consistent with these statutes, affiliates of Amazon.com, Inc. (“Amazon”), collect and remit all applicable sales taxes—more than \$40 million in 2016—that are associated with those affiliates’ sales in South Carolina. The Notice does not challenge the sales taxes associated with these transactions. Instead, the Notice seeks to impose a sales tax collection and remittance obligation on Amazon Services LLC (“Amazon Services”) with respect to sales by third-party sellers, known as “Merchants,” that sell their products on the www.amazon.com website (hereinafter referred to as the “Marketplace”). The Department of Revenue’s attempt to impose such an obligation on Amazon Services is improper for a number of reasons.

First and foremost, Amazon Services is not the seller of the products at issue because it is the Merchants, and not Amazon Services, that transfer title and possession of the Merchants’ products to customers in exchange for consideration. *See* S.C. Code Ann. § 12-36-100. Amazon Services simply operates the Marketplace. A Merchant may utilize the Marketplace to sell its products, but that Merchant retains control of every part of those transactions—setting prices, quantities, terms, and the return policy, and deciding whether to offer the products for sale at all.

A Merchant may also choose to avail itself of other services provided by Amazon Services, such as product storage, packaging, and shipping. A Merchant’s use of these additional services does not undermine the conclusion that it is the Merchant, and not Amazon Services, who is the seller of its products. Simply put, a Merchant’s sale of a product in the Marketplace is *the Merchant’s* sale, and not someone else’s sale. Imposing a sales tax collection and remittance

obligation on Amazon Services for such third-party sales, simply because Amazon Services offers a place online where Merchants can sell their products, is not authorized by South Carolina law.

Moreover, South Carolina's Efficient Administration provision (the "EA Provision"), codified as part of the Sales and Use Tax Code, is inapplicable to Amazon Services and therefore does not affect the analysis. The EA Provision "vests in the Commission limited discretionary power" to treat certain parties as agents of others, thereby potentially shifting sales tax collection and remittance obligations. Not only is the EA Provision inapplicable to Amazon Services by the provision's own terms, but its application is unnecessary to effectively administer South Carolina's sales and use tax laws with respect to Merchant sales.

Finally, the Department of Revenue's attempt to collect sales taxes from Amazon Services is inconsistent with the United States Constitution and federal statutory law. The South Carolina sales tax, as applied in the Notice, impermissibly violates Amazon Services's due process rights and burdens interstate commerce. The Notice also infringes upon provisions of the Internet Tax Freedom Act, which provides that states may not discriminate against electronic commerce by (i) taxing online transactions that would not be taxed if they were accomplished through traditional methods, (ii) taxing transactions that are unique to the internet, or (iii) shifting the tax collection burden to a party who would not bear that burden if the transaction were accomplished through traditional methods. The Notice, as applied to Amazon Services, discriminates against Amazon Services in all three of those ways, and is therefore improper.

In short, Amazon Services's operation of the Marketplace is essentially the same as when the owner of a shopping mall leases space in the mall to other retailers. Just as the mall owner is not obligated to collect and remit sales taxes when other retailers sell products in the mall,

Amazon Services is not obligated to collect and remit sales taxes when Merchants sell their goods in the Marketplace. The Department of Revenue’s attempt to impose such an obligation is inconsistent with South Carolina statutes, guidance issued by the Department of Revenue, the United States Constitution, and federal law. Accordingly, the proposed assessment set forth in the Notice should be rejected.

II. FACTUAL BACKGROUND

A. The Amazon Marketplace

Amazon opened its virtual doors on the World Wide Web in July 1995. Originally founded as an online bookstore, Amazon has expanded into a broad variety of other business lines as well. Part of Amazon’s business involves selling retail products (“Retail Sales”) in the Marketplace, through several Amazon affiliates.¹ An equally significant component of Amazon’s business involves making available the Marketplace and its complementary services to independent, third-party businesses, known as Merchants, that may sell their products in the Marketplace.

Amazon’s goal is to be Earth’s most customer-centric company. One of its core principles is that leaders “obsess” over customers. Amazon Leadership Principles, Ex. 1. As part of this customer obsession, Amazon strives to offer customers the widest selection, best service, and lowest prices. Customers benefit from easy-to-use functionality, fast and reliable fulfillment, and timely customer service.

Amazon’s customer-centric approach offers Merchants the ability to sell products in its Marketplace. This allows Merchants to directly compete with Amazon.com LLC’s Retail Sales.

¹ Amazon affiliates that engage in Retail Sales include: AmazonFresh LLC, Fabric.com, Woot, Inc., Zappos Retail, Inc., 6pm.com, LLC, Amazon Web Services, Inc., Quidsi Retail LLC, IMDb.com, Inc., BOP LLC, Amazon.com LLC, Warehouse Deals LLC, and Amazon Digital Services LLC.

Amazon Services is the Amazon subsidiary that operates the Marketplace and that is subject to the Department of Revenue's Notice. But as explained further herein, Amazon Services does *not* make any Retail Sales of tangible personal property to South Carolina residents. It is instead a service provider that offers access to the Marketplace to Merchants and Amazon affiliates alike.

B. Amazon's history in South Carolina

Amazon is a significant employer and a responsible corporate citizen of South Carolina. Amazon entities have invested almost \$145 million in South Carolina and employ approximately 4,200 people in the state.

Amazon.com LLC began selling to South Carolina residents more than 20 years ago. In 2005, Amazon.com, Inc. acquired BookSurge LLC, a book printing business located in Charleston. See Press Release, Amazon.com, Inc., Amazon.com Acquires BookSurge LLC, Apr. 4, 2005, Ex. 2. Now called CreateSpace, it maintains offices and operates a warehouse in South Carolina. Terry Ward, COLA DAILY AMAZON EXPANDING IN LEXINGTON COUNTY, Nov. 29, 2016, Ex. 3. Amazon affiliates have also opened two large fulfillment centers in South Carolina. In October 2011, Amazon.com.dedc LLC ("DEDC"), a subsidiary of Amazon Fulfillment Services, Inc. ("AFS") opened a 1.25 million square foot fulfillment center in West Columbia. In September 2012, DEDC also opened a 1 million square foot fulfillment center in Spartanburg.

In recognition of the jobs, opportunities, and revenue that these types of operations brought to South Carolina, the state legislature granted a five year exemption on the collection of sales tax on goods sold in South Carolina by companies with a distribution facility located in the state (the "Distribution Facility Sales Tax Exemption"). This exemption was effective from January 1, 2011 through December 31, 2015. See S.C. Code Ann. § 12-36-2691.

Following the expiration of the Distribution Facility Sales Tax Exemption, Amazon affiliates engaged in Retail Sales have collected from customers and remitted to South Carolina

substantial amounts of sales taxes. In the aggregate, these affiliates paid more than \$40.3 million of sales tax to South Carolina in 2016. Additionally, the 2015 tax return filed by AFS on behalf of itself and its affiliates (such as DEDC), reported a License Fee Liability based on capital of \$159,434. Amazon affiliates also paid wage and other business-related taxes in connection with the two fulfillment centers and warehouse facility. DEDC and other Amazon affiliates additionally paid \$2,333,001 during 2016 in real estate and personal property taxes directly to South Carolina counties.

The sales taxes remitted by Amazon affiliates have far surpassed South Carolina's expectations. For example, the day before the Distribution Facility Sales Tax Exemption expired, Bonnie Swingle, spokesperson for the South Carolina Department of Revenue, stated that following the expiration, "an estimated \$13.8 million in additional revenue is expected for the state of South Carolina." Warren L. Wise, THE POST AND COURIER 2016 DELIVERS TAXES, Dec. 31, 2015, Ex. 4. Other observers expected less. Cassie Cope, THE STATE CONTROVERSIAL AMAZON SC TAX BREAK SET TO EXPIRE IN 2016, Dec. 28, 2014, Ex. 5. The actual remittances by Amazon affiliates engaged in Retail Sales far exceed these estimates. Indeed, they are nearly three times higher.

C. Sales on the Marketplace

Amazon's website, www.amazon.com, operates as a virtual marketplace where physical and electronic products are sold. Sellers utilize the Marketplace to sell products to consumers. Amazon Services operates the Marketplace and enters into agreements with all sellers, some of which are Merchants and some of which are Amazon affiliates that engage in Retail Sales.

Approximately 50 percent of the sales taking place in the Marketplace are sales by Merchants. When a Merchant sells a product in the marketplace, it does so through a service administered by Amazon Services called "Selling on Amazon." The Selling on Amazon service

enables Merchants to sell new and used products in the Marketplace right alongside the Amazon affiliates' Retail Sales offerings.²

The starting point for a Merchant sale occurs when a Merchant lists their product in the Marketplace. A central and defining feature of the Selling on Amazon program is that each Merchant—not Amazon Services—controls which products it will list in the Marketplace and how those products will be listed. To manage a listing, a Merchant uses an online portal, called “Seller Central.” Seller Central allows each Merchant to actively manage its listings, orders, and presence in the Marketplace. Merchants may, among other things: upload product listings, remove product listings, edit listings, alter shipping and fulfillment terms, and otherwise manage the products they list for sale in the Marketplace. A Merchant is the sole responsible party for providing accurate and complete product information and for promptly updating that information as necessary. BSA § S-1.1, Ex. 6. Amazon Services does not separately warrant that the product descriptions are accurate, complete, reliable, current, or error-free. Conditions of Use, Product Descriptions, last updated June 21, 2016, at 2, Ex. 7.

Merchants also set the prices of the products they list for sale. BSA § S-1.1, Ex. 6; *id.*, “Purchase Price” at 21. To help facilitate this process, Seller Central informs Merchants of the lowest price at which a given product is listed on the Marketplace, as a reference point. Merchants then set the price at whatever amount they choose, even if it undercuts the price offered by one of Amazon’s affiliates engaged in selling the same product through a Retail Sale.

² The terms and conditions governing the Merchants’ sales in the Marketplace are set forth in the Amazon Services Business Solutions Agreement (the “BSA”). Ex. 6. Aside from the rate of fees paid by Merchants to Amazon Services, the terms governing the sale of products in the Marketplace under the BSA are not dissimilar to the terms set forth in the intercompany agreements between Amazon’s affiliates engaged in Retail Sales and Amazon Services and AFS.

At their own discretion, Merchants can also offer discounts, such as “lightning deals,” on their products.

In this way, Merchants in the Marketplace compete directly with Amazon’s affiliates. Indeed, a key feature of the Marketplace is that multiple sellers can offer to sell the same product. If multiple sellers list the same product, the product detail page allows customers to choose which seller to purchase from. A neutral algorithmic formula determines which seller will be the default seller of the product, such that their product is added to a customer’s shopping cart if the customer clicks the “Buy Box” on the product detail page, which is the yellow box in the top-right corner of the page that says “Add to Cart.” Sellers that do not win the Buy Box are identified as “Other Sellers on Amazon” on the product detail page.



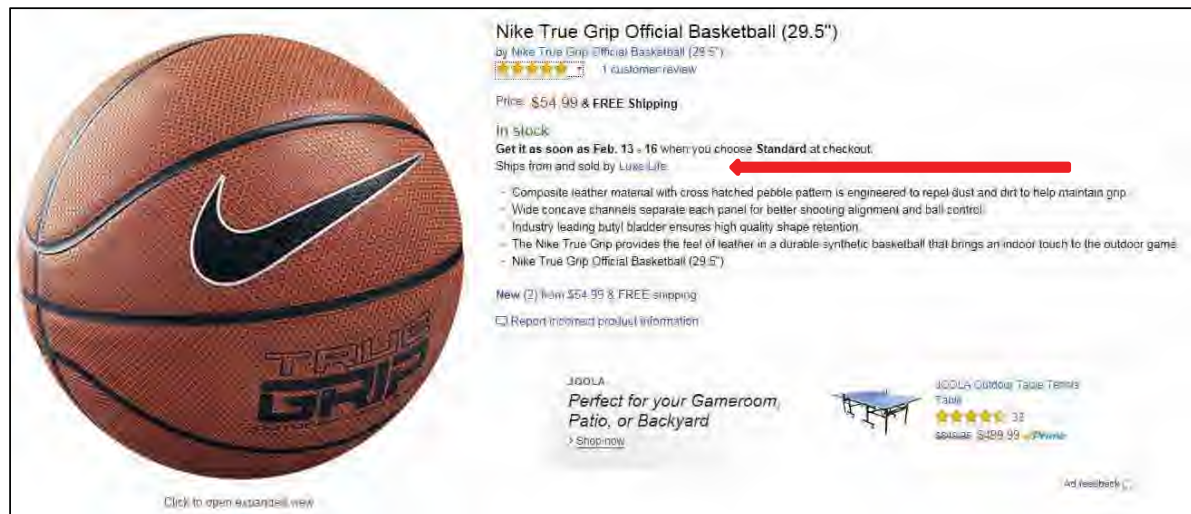
In keeping with the principle of customer obsession rather than competitive focus, Amazon’s affiliates who engage in Retail Sales are not the default sellers whose products are selected when customers click the Buy Box. Rather, a Merchant will be the default seller of an item, and will receive the orders of customers clicking the Buy Box, if the Merchant’s product listing best fits the criteria of the algorithm, such as by offering the particular product, the best shipping terms, the best price, and maintaining sufficient inventory. Amazon Services provides

Merchants with clear instructions for how to “win” the Buy Box for any given product.

AMAZON.COM, SEE INCREASE YOUR CHANCES OF WINNING THE BUY BOX,

<https://www.amazon.com/gp/help/customer/display.html/?nodeId=201687830> (last visited Feb. 14, 2017), Ex. 8.

When a customer views a Merchant’s product in the Marketplace, the Merchant’s identity is clear to the customer. Similar to Retail Sales, this is accomplished by identifying the name of the seller in the product’s description in the Marketplace (e.g., “Ships from and sold by Luxe Life”).



When a product sold by a Merchant is in a customer’s cart, the cart page also informs the customer that the Merchant is the seller.



Similarly, once a customer has purchased a Merchant’s product, the Merchant’s name is featured prominently on the customer’s order page.



The same information is listed on the customer’s invoice, as well.

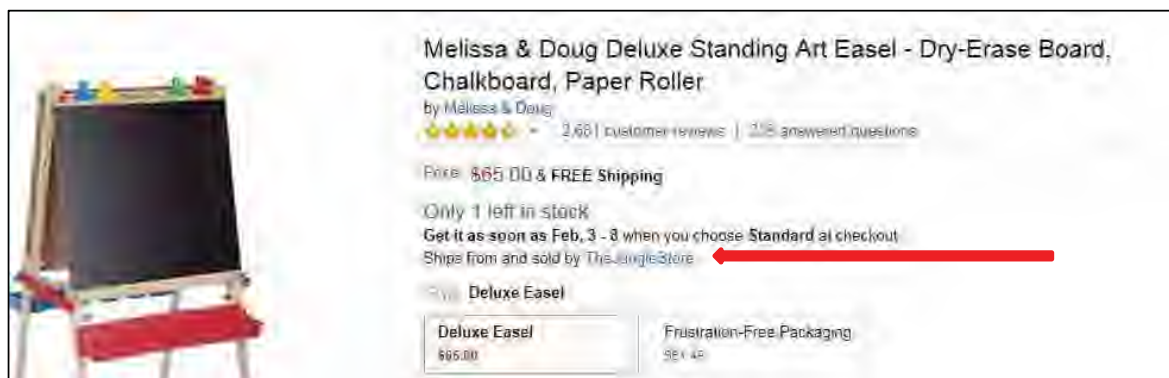


Once a customer has chosen to purchase a Merchant’s product, the order may be fulfilled in one of two ways: by the Merchant, referred to as the “Merchant Fulfillment Network” or the “MFN,” or through a service provided by Amazon Services called “Fulfillment by Amazon,” or “FBA.” These fulfillment processes are described below.

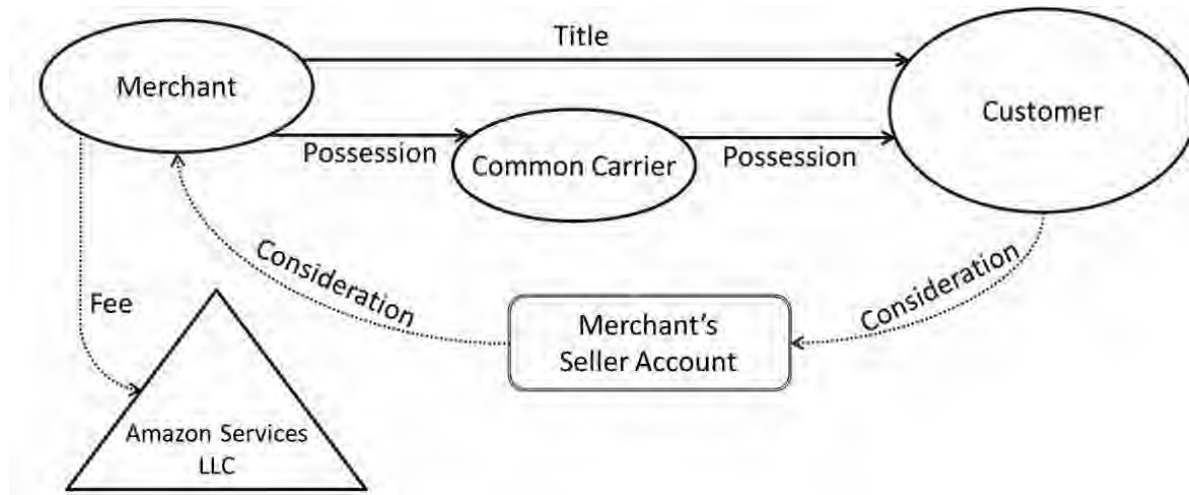
1. Merchant Fulfillment Network

During the audit period, Merchants selling into South Carolina chose to fulfill nearly half of all customer orders themselves. See South Carolina Activity Q1 2016 Spreadsheet, Ex. 9. These Merchants belong to the Merchant Fulfillment Network. When a customer selects a product that will be fulfilled by the Merchant, Amazon notifies the customer that the product will be shipped by the Merchant through a clear notation in the product description. For example, in

the screenshot below, the product description includes a notification that reads: “Ships from and sold by TheJungleStore.”



When a customer orders an MFN product, Amazon Services notifies the Merchant by email. The Merchant is then responsible for shipping the product to the customer by common carrier, and must notify Amazon Services once the product has shipped. Upon notification that a product has been shipped, Amazon Services charges the customer’s credit card. This transaction is processed by Amazon Payments, Inc. (a payment processing service provider with which Amazon Services separately contracts). Amazon Services records the transaction in the Merchant’s “seller account.” The Merchant’s seller account is a component of the Seller Central online portal, which records the proceeds accrued from the seller’s product sales and the applicable fees (paid to Amazon Services) associated with those sales. Every two weeks, or more frequently if desired, the balance (i.e., revenue from sales minus fees owed to Amazon Services) in the Merchant’s seller account is transferred to the Merchant’s bank account. The following chart depicts this process:



Customer service for MFN products is handled primarily by the Merchants themselves.

Amazon Services informs customers that they should contact the Merchant who sold the products if an issue arises. Merchants are responsible for all customer contacts relating to (i) their products, pricing, rebates, item information, availability, technical support, warranty, and public and private recalls; (ii) order fulfillment; (iii) order cancellation; and (iv) feedback concerning customer experiences with their personnel, policies, and processes.

Amazon Services has limited contact with the customer and handles inquiries only if they relate to (i) payment; (ii) credit card processing, debiting, or crediting; or (iii) use of the www.amazon.com website and its features. Amazon Services will coordinate certain routine transaction communications with Merchants' customers, such as order confirmations, cancellation confirmations, and similar communications, but the Merchants otherwise handle all service communications.

If a Merchant fails to resolve a customer's service issue, the customer may then choose to file a claim through Amazon Services's "A-to-z Guarantee Program," which serves as a supplemental resource available to Merchants' customers. A claim may be filed, for instance, when a customer never received a product or received a product materially different from what

he ordered or expected, and the Merchant failed to respond to his complaints. A portion of the fees paid by the Merchants to Amazon Services is used to fund the A-to-z Guarantee Program. When Amazon Services receives an A-to-z claim, it sends the relevant Merchant an email detailing the claim and requesting basic information from the Merchant about the order and its fulfillment. The Merchant is responsible for providing Amazon Services with the transaction information, such as proof of delivery and order identification. Amazon Services then determines how to settle the claim, which may include reimbursement of the order to the customer, at the Merchant's expense.

2. Fulfillment by Amazon

Rather than fulfilling their sales orders themselves, Merchants using the Selling on Amazon service may opt into the Fulfillment by Amazon service. Through the FBA service, Amazon Services provides storage, packaging, and shipping services to the Merchants. If the Merchant opts into FBA, the terms of service are governed by additional provisions of the BSA. Of all the Merchant products sold into South Carolina during the audit period, slightly more than half were sales using the FBA service. *See South Carolina Activity Q1 2016 Spreadsheet, Ex. 9.*

To offer the FBA service, Amazon Services maintains an intercompany agreement with AFS, the parent company of various fulfillment center entities (such as DEDC). AFS's subsidiaries, not Amazon Services, physically handle the storage, packaging, and shipment services at the fulfillment centers. Merchants, however, are not parties to any agreement with AFS, its subsidiaries, or the fulfillment centers.

Merchants must register each product for which the FBA service is requested. The Marketplace communicates to customers that the Merchant's product will be sold by the Merchant, and fulfilled through the FBA service, by including a clear notation in the product

description. For example, in the screenshot below, the website indicates that the product is “Sold by Amer_Hobby and Fulfilled by Amazon.”

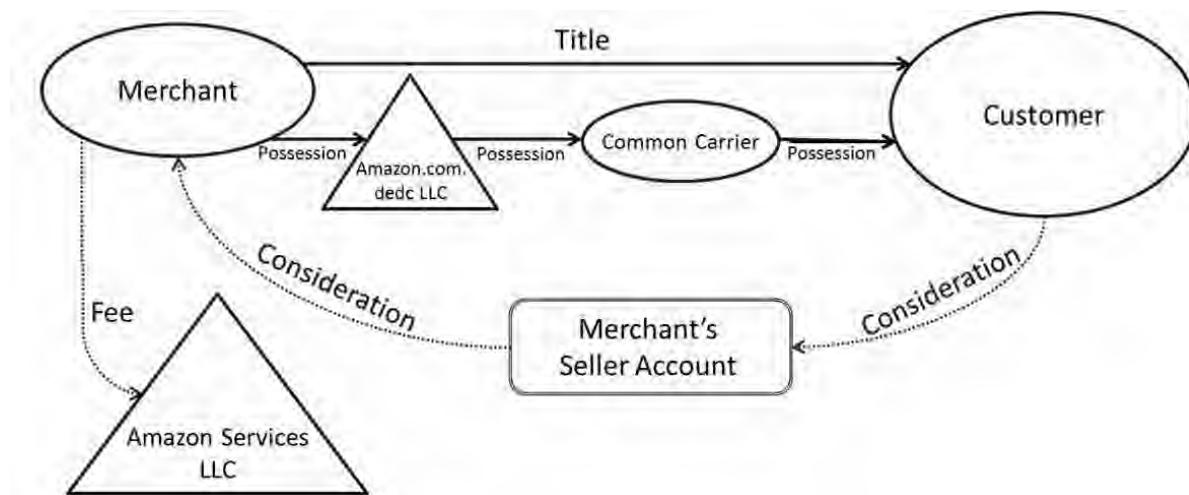


Merchants can withdraw registration of any products from the FBA service at any time, whereupon the MFN procedures would apply to their sales, as described above.

To facilitate the FBA service, Merchants initially ship their products, at their own expense, to a designated fulfillment center. Merchants retain title to all of their products stored in fulfillment centers, and pay storage fees to Amazon Services. BSA §§ F-3.3, F-7.2, F-12; *id.* at 41, Ex. 6. At no point in the process does Amazon Services possess or obtain title to the products. Instead, a subsidiary of AFS (not Amazon Services) takes possession of the products after the Merchants ship them to designated fulfillment centers. The AFS subsidiary’s possession of the products, however, is merely conditional: The Merchant may request return of any of its products at any time. Moreover, the AFS subsidiary’s possession of the products is temporary and transitory: Possession of the product is ultimately transferred to a customer following the Merchant’s sale of the product, or back to the Merchant upon the Merchant’s request.

When a customer orders an FBA product from a Merchant, Amazon Services sends an automated message to AFS. The product is packaged by AFS and shipped from the fulfillment center via common carrier directly to the Merchant’s customer. Upon shipment, Amazon

Services charges the customer's credit card. As with MFN sales, Amazon Services records the transaction in the Merchant's "seller account," and distributes the balance (i.e., revenue from sales minus fees owed to Amazon Services) every two weeks, or more frequently if desired, to the Merchant's bank account. The following chart depicts this process:



Unlike the MFN, Amazon Services manages customer service for Merchants who sell products on the Marketplace and utilize FBA. This includes fielding customer inquiries, refunds, and the return of products. Although Amazon Services handles customer service generally, Merchants are free to implement policies and handle returns that are more generous to customers than the baseline policy offered by Amazon Services.

Finally, Amazon Services offers its FBA service not only to Merchants that sell their products in the Marketplace, but also to third parties that sell products through their own independent websites, by phone, in person, through a catalogue, or otherwise. A third party need not sell a product in the Marketplace to utilize the FBA service. When a customer purchases one of these products, the Merchant must notify Amazon Services of the order, which then instructs

the fulfillment center to fulfill the order. If a third party utilizes FBA for a product that it did not sell on the Marketplace, Amazon Services does not provide customer service for that product.³

D. The agreements between the Merchants and Amazon Services make clear that the Merchants are the sellers of their own products

Merchants that use the “Selling on Amazon” service are unrelated to Amazon Services and include major retailers, small businesses, local stores, and people selling products from their homes. Merchants are located not just in South Carolina, but in many other states and countries.

Amazon Services’s “Selling on Amazon” service is an entirely separate business from that of Amazon.com LLC and other Amazon affiliates who engage in Retail Sales in the Marketplace. Amazon Services does not itself sell any products or taxable services in South Carolina other than Amazon Prime subscriptions, for which it collects and remits applicable sales taxes.

The “Selling on Amazon” service that Amazon Services provides to third party Merchants is defined and conditioned by the terms of the BSA. The BSA provides that the products that Merchants sell in the Marketplace are the Merchants’ products, and that Amazon Services is not the seller of those products. Merchants must “ensure that [they] are the seller of each of [their] Products” and “identify [themselves] as the seller of each of [their] Products on all packing slips or other information included or provided in connection with [their] Products and as the Person to which a customer may return the applicable product.” BSA § S-2.1, Ex. 6. The BSA provides that Amazon Services and Merchants are “independent contractors” with no

³ Notably, the FBA sales data underlying the calculations set forth in the Notice includes sales that did not occur in the Marketplace, but which were fulfilled through the FBA service. Put differently, the Notice’s computations include transactions where a South Carolina resident purchased a product from a third party that has no contacts with Amazon except to have its products stored, packaged, and shipped through an agreement with Amazon Services.

“partnership, joint venture, agency, franchise, sales representative, or employment relationship between” them. BSA § 13, Ex. 6. For accounting purposes, Amazon Services generally recognizes fee income from items sold by Merchants as service sales. See Amazon.com, Inc., Form 10-Q for the Quarterly Period Ended September 30, 2016, at 22, Ex. 10.

- E. Because Merchants sell their own goods using the Marketplace, the BSA appropriately recognizes that any tax collection and remittance obligations belong to the Merchants

The BSA states that Merchants who use “Selling on Amazon” to make sales, whether fulfilled through MFN or FBA, are responsible for all tax collection, reporting, and payment.

Section 10 of the BSA states:

As between the parties, you will be responsible for the collection, reporting and payment of any and all of Your Taxes, except to the extent Amazon expressly agrees to receive taxes or other transaction-based charges in connection with tax calculation services made available by Amazon and used by you. You agree to and will comply with the Tax Policies.”

BSA § S-10, Ex. 6. Section 10 contains a hyperlink to a “Tax Policies” webpage on Amazon’s “Seller Central Help” website. That webpage contains an additional provision regarding Merchants’ tax obligations, which makes clear that Amazon Services is not obligated to determine whether any taxes are due on a Merchant’s sales, or to collect, report, or remit any taxes. See *Seller Central Help - Tax Policies*, AMAZON.COM, https://sellercentral.amazon.com/gp/seller/registration/participationAgreement.html/ref=ag_xx_cont_1791?itemID=200405820&language=en_US (last visited Feb. 14, 2017), Ex. 11. The BSA also specifically provides that any sales taxes generated by Merchants’ use of the FBA service are the Merchants’ obligation. Section F-14 states: “You understand and acknowledge that storing Units at fulfillment centers may create tax nexus for

you in any country, state, province, or other localities in which your Units are stored, and you will be solely responsible for any taxes owed as a result of such storage.” BSA at 40, Ex. 6.

The “Sales Proceeds” that Merchants receive from their sales, net of fees charged by Amazon Services, include the applicable taxes that are paid by the Merchants’ customers. ““Sales Proceeds’ means the gross proceeds from any of Your Transactions, including all shipping and handling, gift wrap and other charges, and *including taxes and customs duties to the extent specified in the applicable Tax Policies.*” BSA at 13 (emphasis added), Ex. 6. Thus, Merchants agree that they may charge their customers appropriate taxes which then would be passed along to the Merchants’ accounts. It is then up to the Merchant to remit the relevant sales taxes to the appropriate jurisdiction.

Merchants with “Professional” subscriptions to Selling on Amazon can opt into “Tax Calculation Services,” which assists them in calculating and collecting their taxes.⁴ Tax Calculation Services helps Merchants calculate U.S. sales and use taxes for all 45 states that impose a sales and use tax and the District of Columbia, as well as certain local tax jurisdictions, based on Merchant-determined calculation settings. Merchants review the tax methodology applied to calculate sales and use taxes and set their own product tax codes, based on their business’s nexus with the states into which they sell their products. Merchants decide whether to include sales and use taxes in the total amount they charge their customers, and how much. If they choose to include tax in the amount they charge their customers, it is up to the Merchants to remit that tax to the appropriate jurisdiction.

⁴ Merchants utilizing the “Individual” payment plan for Selling on Amazon do not have access to Tax Calculation Services.

F. Sales tax collection and remittance practice nationally

Outside of South Carolina, Amazon Services is not required to, and does not, collect and remit sales tax for Merchants in any state. With limited exception, companies that offer online marketplaces for third-party sellers and with which Amazon Services competes, such as Google, Alibaba, Sears, Etsy, and Wal-Mart, do not collect and remit sales tax on third-party merchants' sales through their marketplaces either.

III. NOTICE OF PROPOSED ASSESSMENT

On December 9, 2016, the Department of Revenue issued Amazon Services a Notice for approximately \$12.6 million for the first quarter of 2016. This amount represents an aggregate 7% tax on the total sales in the first quarter of 2016, less refunds, made by (i) Merchants using Amazon Services's "Selling on Amazon" service, including sales utilizing both the MFN and FBA, and (ii) other third-party sales that did not take place in the Marketplace, but that used the FBA service. This 7% aggregate tax is composed of: (i) a 5% tax on gross proceeds pursuant to S.C. Code Section 12-36-910, (ii) a 1% additional tax on gross proceeds pursuant to S.C. Code Section 12-36-1110, and (iii) a 1% local sales tax that assumes that all counties in South Carolina imposed such a tax at the maximum 1% level. The Notice offers little explanation as to the basis for the assessment, except to say that the sales by Merchants represent "virtual consignment sales."

Amazon Services appreciates that the Commission promptly issued the Notice at Amazon Services's request in order to advance discussion, consideration, and if necessary, litigation of whether the tax assessment based on Merchant sales is appropriate. We note, however, that the computation of the adjustment set forth in the Notice fails to reflect adjustments for sales by Merchants that sold to customers who (i) reside in counties that do not impose a local sales tax;

(ii) reside in counties that impose a local sales tax at a rate lower than 1%; and (iii) remitted use taxes to South Carolina.

IV. ANALYSIS

The proposed adjustment set forth in the Notice is flawed for several reasons. According to the relevant statutes, Amazon Services is not liable for sales taxes imposed on someone else's sale. South Carolina's efficient administration sales tax provision does not alter this conclusion. Finally, the assessment proposed by the Notice violates Amazon Services's federal constitutional rights, as well as the federal Internet Tax Freedom Act. These issues are discussed below, in turn.

A. Amazon Services is not liable for the collection and remittance of sales taxes associated with Merchants' sales

South Carolina imposes a sales tax on goods sold in the state, and a use tax on goods not covered by the sales tax. In South Carolina, a "sales tax, equal to five percent of the gross proceeds of sales, is imposed upon every person engaged or continuing within this State in the business of selling tangible personal property at retail." S.C. Code Ann. § 12-36-910. When a particular transaction is not subject to sales tax, South Carolina imposes an alternative "use tax . . . on the storage, use, or other consumption in this State of tangible personal property, regardless of whether the retailer is or is not engaged in business in this State." *Id.* § 12-36-1310(A). The state also has authorized an additional 1% sales tax on gross proceeds, and each county may elect to impose sales taxes of up to 1%. *See* S.C. Code Ann. § 12-10-1110.

The South Carolina Code further defines the imposition of the sales tax. First, "sales at retail" and "retail sales" include all sales of tangible personal property except those defined as wholesale sales. *Id.* § 12-36-110. As relevant here, "sale" and "purchase" are defined as "any

transfer, exchange, or barter, conditional or otherwise, of tangible personal property for a consideration including . . . a transfer of title or possession, or both.” *Id.* § 12-36-100.

Second, “retailers” or “sellers” who might engage in such sales are those “selling or auctioning tangible personal property whether owned by the person or others; . . . [or] renting, leasing, or otherwise furnishing tangible property for a consideration,” who are also “maintaining a place of business or qualifying to do business in this State” or “not maintaining an office or location in this State but soliciting business by direct or indirect representatives, manufacturers agents, distribution of catalogs, or other advertising matter or by any other means, and by reason thereof receives orders for tangible personal property or for storage, use, consumption, or distribution in this State.” *Id.* § 12-36-70 (1)(a), (1)(c), (2)(a)-(b).

Finally, retailers may elect to add amounts to the sales prices of personal goods sold at retail, but a taxpayer’s decision not to do so does not excuse them from remitting the applicable sales tax for their sales. *Id.* § 12-36-940 (A)-(B).

The foregoing aspects of South Carolina’s sales tax law make a simple principal abundantly clear: Sales taxes, if applicable, are imposed upon persons that sell tangible personal property within South Carolina.⁵ As described below, when a Merchant lists and sells a product

⁵ Even if there were ambiguity in the statute, in the context of a tax statute, it is a settled rule that ambiguities are resolved “against the government and in favor of the taxpayer.” See *Fairfield Waverly, LLC v. Dorchester Cnty. Assesor*, Docket No. 14-ALJ-17-0602-CC (filed February 1, 2017) (citing *Mead v. Beaufort Cnty. Assesor*, Docket No. 13-ALJ-17-0585-CC (filed Aug. 19, 2014)) and *Hadden v. S.C. Tax Comm’n*, 183 S.C. 38, 46-47, 190 S.E. 249, 251 (1937) (noting that “where a tax statute is ambiguous or is reasonably susceptible of an interpretation that would exclude the person or subject sought to be taxed, any substantial doubt must be resolved against the government in favor of the taxpayer”); see also *Clark v. S.C. Tax Comm’n*, 259 S.C. 161, 169, 191 S.E.2d 23, 26 (1972) (“Revenue laws are generally construed in favor of the taxpayer and against the taxing authority.”); and Sutherland Statutory Construction § 66:1 (6th ed.). “In the enforcement of tax statutes, the taxpayer should receive the benefit in cases of doubt.” *Alltel Commc’ns v. S.C. Dep’t of Rev.*, 399 S.C. 313, 321, 731 S.E.2d 869, 872 (2012) (citing *S.C. Nat’l Bank v. S.C. Tax Comm’n*, 297 S.C. 279, 281, 376 S.E.2d 512, 513 (1989)). “[W]here the (continued...) ”

in the Marketplace, *the Merchant* is the seller of that product. The fact that Amazon Services makes the Marketplace available does not alter these conclusions. Accordingly, when a Merchant sells a product in the Marketplace, Amazon Services is not liable for any applicable sales taxes.

1. Under South Carolina law, Merchants are the sellers of the products that they sell in the Marketplace

South Carolina law makes clear that Merchants are the sellers of products they sell in the Marketplace. Again, South Carolina defines a “sale” as “any transfer, exchange, or barter, conditional or otherwise, of tangible personal property for a consideration including . . . a transfer of title, or possession, or both.” S.C. Code Ann. § 12-36-100. As discussed above, the Merchants may fulfill their sales in one of two ways: through the Merchant Fulfillment Network, or the Fulfillment by Amazon service. Regardless of how the Merchants’ sales are fulfilled, South Carolina law dictates that the Merchants are the sellers.

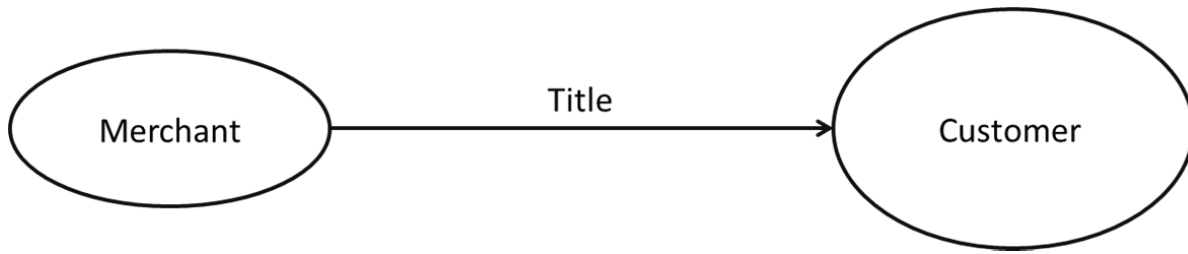
a) Merchant Fulfillment Network

An MFN sale is a transfer of title and possession from a retailer, i.e., the Merchant, to a customer, in exchange for consideration. The following example describes and depicts these transfers:

Title

When the customer purchases the Merchant’s product fulfilled through the MFN, the Merchant transfers title directly to the customer:

language relied upon to bring a particular person within a tax law is ambiguous or is reasonably susceptible of an interpretation that will exclude such person, then the person will be excluded, any substantial doubt being resolved in his favor.” *Cooper River Bridge, Inc. v. S.C. Tax Comm’n*, 182 S.C. 72, 76, 188 S.E. 508, 509–510; *see also SCANA Corp. v. S.C. Dep’t of Revenue*, 384 S.C. 388, 394 n. 3, 683 S.E.2d 468, 471 (2009) (Beatty, J., dissenting) (noting general rule that where substantial doubt exists as to the construction of tax statutes, the doubt must be resolved against the government).



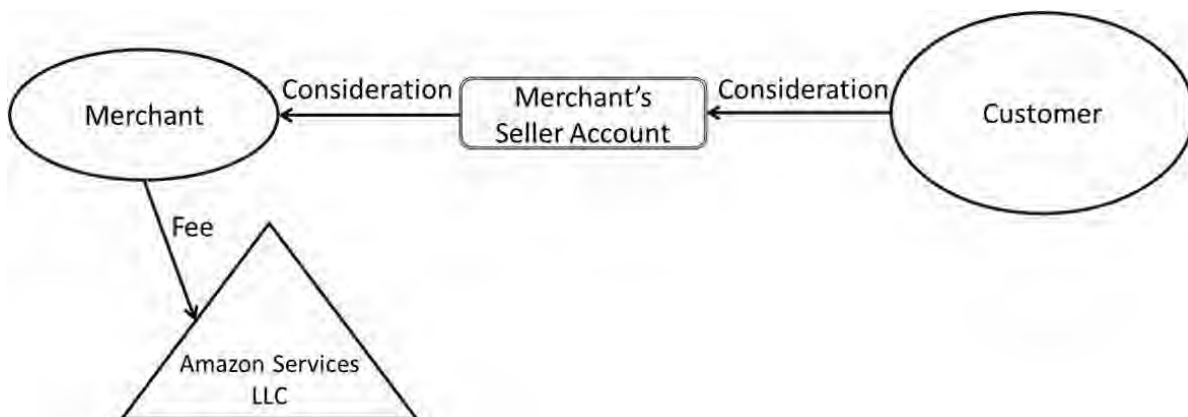
Possession

Simultaneously, the Merchant transfers possession of the product to a common carrier, who then transfers possession to the customer:



Consideration

Finally, after the Merchant confirms that the product has shipped, the customer's credit card is charged, and consideration is transferred to the Merchant via its Merchant seller account on a periodic basis.

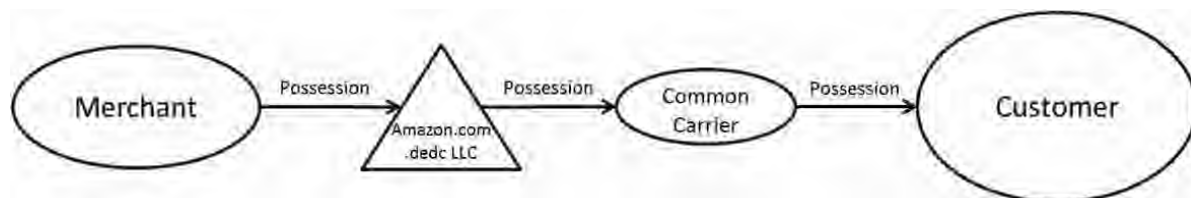


It is worth pausing here to note that although Amazon Services provides transaction processing services to the Merchants, funds received from customers purchasing the Merchants' products are allocated directly to the Merchants' seller accounts. Amazon Services deducts only the fees owed to it pursuant to the terms of the BSA. In this manner, Amazon Services is merely filling the role of "payment processor" similar to Venmo, Paypal, or a bank's online payment applications—services for which sales taxes are not applicable.

In short, when a Merchant sells a product and uses the MFN to fulfill that sale, it is *the Merchant* that exchanges title and possession of the product in exchange for consideration. The Merchant is therefore the seller of that product. See S.C. Code Ann. § 12-36-100.

b) Fulfillment by Amazon

An FBA sale is virtually identical to an MFN sale. Just as with an MFN sale, title transfers directly from a Merchant to a customer. Similarly, consideration is transferred from a customer to the Merchant via the Merchant's seller account. Transfer of possession is also the same, except that the Merchant conditionally and temporarily transfers possession of the product to an AFS subsidiary's fulfillment center (*e.g.*, Amazon.com.dedc LLC), as depicted below:



Although slightly different than MFN sales, a Merchant remains the seller when it sells a product in the Marketplace and use the FBA service. In Revenue Ruling No. 14-4, the Commissioner of South Carolina's Department of Revenue (the "Commissioner") expressly addressed this situation. In that published guidance, the Commissioner contemplated a situation where:

The business [Merchant] sells tangible personal property to resident in South Carolina from outside of South Carolina (e.g., telephone, over the Internet, via catalog/direct mail, or otherwise) and ships its product for distribution to a third-party distributor located in South Carolina that performs the functions such as labeling, packaging, and shipping. Note: this answer assumes that the third-party distributor did not purchase the merchandise, but is providing a service on behalf of a retailer selling tangible personal property to South Carolina residents.

S.C. Dep't of Revenue Ruling #14-4(C)17. Based on these facts, which are identical to services provided to FBA Merchants by Amazon Services, the Commissioner determined that it is the Merchant, not the distributor, who is the seller of tangible personal property in South Carolina.

Id.

In short, South Carolina's statutes, consistent with the guidance issued by the Commissioner, make clear that the Merchants are the sellers of the goods they list in the Marketplace. This is the case regardless of how those sales are fulfilled.

2. Amazon Services is not a seller when a Merchant lists and sells a product in the Marketplace

To reiterate, South Carolina's sales tax law makes clear that if a sales tax is applicable, it is imposed on *the seller* of the tangible personal property. As described above, when a Merchant lists and sells a product in the Marketplace, it is the Merchant—and not Amazon Services—that has sold that product.⁶

a) Amazon Services does not transfer title or possession of tangible personal property in exchange for consideration

Amazon Services is not the seller in the Merchant transactions because it does not transfer title or possession of the Merchant's product to customers in exchange for consideration.

See S.C. Code Ann. § 12-36-100. Irrespective of whether Merchants sell their products through

⁶ Consistently, when an Amazon affiliate engaged in Retail Sales sells a product in the Marketplace, it is the Amazon affiliate—and not Amazon Services—that has sold that product.

the MFN or FBA, Amazon Services never holds title to the products, nor does it transfer that title to a Merchant's customer. Similarly, Amazon Services never receives or has a legal claim to the consideration a customer pays to Merchants in connection with an MFN or FBA sale. Moreover, in MFN sales, an Amazon entity never possesses the product. Only with respect to FBA sales does an AFS subsidiary (not even Amazon Services) hold conditional and transitory possession of products. As discussed above, however, the Commissioner has ruled that a party, like a Merchant, is the entity making the sale even where a service like FBA is utilized in connection with a sale into South Carolina. See S.C. Dep't of Revenue Ruling No. #14-4 (Sept. 10, 2014), Ex. 12.

Other states have reached the same conclusion. Interpreting similar statutory language, the Virginia Department of Taxation found that Merchants, and not Amazon Services, are the sellers of products sold by the Merchants in the Marketplace. Virginia Dep't of Taxation Ruling (Aug. 23, 2013), Ex. 13. Because Amazon Services merely provides services, does not transfer title or possession of the Merchants' products, and does not receive consideration for the products, Amazon Services is not the seller of those products. *Id.* Simply put, because the "retail sale occurs between the Merchant and the customer," Amazon Services is not responsible for collecting or remitting any sales tax. *Id.* at 4.

b) Amazon Services lacks the hallmarks of a seller

Not only is Amazon Services not a seller from a statutory perspective, but it also does not have any of the hallmarks of a seller of a Merchant's products. As an initial matter, Amazon Services has almost no control over a Merchant's products. This lack of control spans the life cycle of a product's sale. For example, a Merchant, not Amazon Services, maintains exclusive control over what product to sell, when to sell the product, in what amount the product may be sold, at what price to sell the product, whether to bundle the product with other products, how to

package the product, and how ultimately to fulfill sales. Once these decisions are made, and the Merchant lists a product in the Marketplace, the Merchant maintains exclusive control over its listings. For example, the Merchant determines how and when to list their products, the descriptions, pictures and videos associated with those products, the price at which a product will be listed, whether and when to offer discounts on products, and whether to de-list a product.

Once a product is ordered by a customer, again, the Merchant controls the process, deciding how that product will be packaged, labeled, and shipped to the customer (assuming the product is sold through the MFN). Even if a Merchant uses the FBA service to fulfill their product orders, the Merchant may request a return of their unsold products at any time. A Merchant using the MFN also exclusively handles customer service requests such as returns, refunds, and exchanges. Even the Merchants using the FBA service must review and respond to customer feedback associated with their products.

Finally, and critically, Amazon Services provides its services to the Merchants and other Amazon affiliates on virtually the same terms, ensuring that the Merchants may compete with those Amazon affiliates on equal footing. This allows the Merchants to sell the same products as Amazon's affiliates, and undercut them on price. In short, the Merchants, not Amazon Services, control product sales, possibly even to the detriment of Amazon affiliates engaged in Retail Sales of the same products. Treating Amazon Services as a seller of a Merchant's products would be unfounded in light of these facts.

Consistent with the foregoing, all of the communications associated with the sale of a Merchant's product uniformly identify the Merchant as the seller. Initially, the Marketplace identifies, throughout the process of a sale, that the Merchant is the seller. This is made clear on the product detail page, in the customer's cart, on the orders page, and on the customer's invoice.

Similarly, Merchants must identify themselves as the seller on all shipping labels, invoices and other communications. Customers and the Merchants may also correspond directly about a product order—making inquiries, soliciting and sharing feedback, and requesting service or follow-up. These communications further support the fact that it is the Merchant that is the seller of the products.

Finally, the agreements between Merchants and Amazon Services make clear that the Merchants are the sellers of their products, and expressly disclaim any sale on the part of Amazon Services. The BSA:

- Describes Amazon Services Business Solutions as “a suite of optional services for sellers.” BSA at 1, Ex. 6.
- Disclaims liability for disputes between customers and sellers “because Amazon is not involved in transactions between customers and sellers.” BSA § 7(b), Ex. 6.
- Requires, for MFN sales, that sellers “(h) ensure that you are the seller of each of Your Products; . . . (j) identify yourself as the seller of each of Your Products on all packing slips or other information included or provided in connection with Your Products and as the Person to which a customer may return the applicable product.” BSA § S-2.1, Ex. 6.
- Recognizes that the products are the Merchants’ own. *See, e.g.*, BSA Definitions at 14, Ex. 6 (“‘Your Product’ means any product or service (including Optional Coverage Plans) that: (a) you offer through the Webstore Service or the Selling on Amazon Service; (b) is made available for advertising by you through the Amazon Clicks Service; or (c) is fulfilled or otherwise processed through the Fulfillment by Amazon Service.”).

Because a Merchant’s sale in the Marketplace is its own, the BSA consistently assigns all tax collection and remittance obligations to the Merchants:

As between the parties, you will be responsible for the collection, reporting and payment of any and all of Your Taxes, except to the extent Amazon expressly agrees to receive taxes or other transaction-based charges in connection with tax calculation services made available by Amazon and used by you. You agree to and will comply with the Tax Policies.

BSA § 10, Ex. 6.

3. South Carolina and other states have declined to impose sales taxes on service providers like Amazon Services

Rather than a seller of products, Amazon Services is merely a service provider. South Carolina and other states have declined to impose sales taxes on sales by third parties that utilize the services of both traditional and e-commerce service providers similar to Amazon Services.

a) Traditional service providers

The Marketplace offers a virtual space for buyers and sellers to buy and sell products. Numerous businesses in traditional fields of commerce provide the same type of service and are not subject to sales tax when a third party sells a product. For example, much like a shopping mall, Amazon Services provides a marketplace in which retailers sell their goods. Beyond merely providing this virtual space, Amazon Services also provides other services (such as payment processing and FBA) to help ensure that a Merchant's customers have a positive experience. A mall does the same, providing restrooms, covered parking, strollers, carts, air conditioning, security, cameras, electricity, dining venues, entertainment, music, and so on, all to ensure that customers visiting the mall have a positive shopping experience. Although several Amazon affiliates, most prominently Amazon.com LLC, occupy "stores" within the Marketplace, tens of thousands of Merchants occupy the remainder. Moreover, those Merchants may sell the same products as the Amazon affiliates engaged in Retail Sales, and at a lower prices if they choose. South Carolina has not obligated mall owners to collect sales tax from retailers selling goods in their malls. Other traditional marketplaces receive similar treatment. *See, e.g.,* S.C. Sales and Use Tax Manual at 309 (flea markets owners are not responsible for taxes on the sales made by vendors within their markets and must obtain a separate license if they intend to make their own sales); *id.* at 289 (sellers at craft shows, carnivals, trade shows, festivals, and fairs are responsible for sales tax collection and remittance); *see also Beach v.*

Livingston, 149 S.E. 2d 328, 330 (1966) (holding that a tax on entering a “place of amusement” applied to entry into a building that housed a bowling alley, but allowing the bowling alley to collect the tax upon bowling, rather than the building owner at entry). South Carolina law does not provide a basis to depart from this treatment for a similar service provider like Amazon Services.

Finally, the Notice characterizes the Merchant sales as “virtual consignment sales.” Although South Carolina has not issued specific guidance concerning consignment sales, other states have declined to impose, or require the collection of, sales taxes on a consignee when the identity of the seller is disclosed to the customer. *See, e.g.*, Tenn. Comp. R. & Regs. 1320-05-01-.01 (“A sale by such factor, auctioneer or agent, when acting for a known or disclosed principal shall be taxable to the principal.”); Ill. Admin. Code tit. 86, § 130.1915(a)(2) (“The receipts from any such sale, when made by an auctioneer or agent who is acting for a known or disclosed principal, are taxable to the principal [T]he principal must be clearly disclosed to the purchasers by the auctioneer or agent so that the purchasers are able to determine who owns the goods that are being sold.”).

In the Marketplace, the seller of the product is always made clear to the customer, whether the seller is a Merchant or an Amazon affiliate engaged in Retail Sales. The Marketplace discloses the seller’s identity before a product is purchased (on the product detail and shopping cart pages), after it has been purchased (on the order and invoice pages), and after the product has been delivered (on packing slips, labels, paper invoices, and in any subsequent communications). Accordingly, if analyzed as a consignment sale, Amazon Services should not be obligated to collect and remit any sales taxes that may be applicable to a Merchant’s sales in the Marketplace.

b) E-commerce service providers

The Marketplace is also similar to services provided by other e-commerce businesses. As an initial matter, Google, Alibaba, Sears, Etsy, and WalMart allow third-party sellers to list items for sale on their own versions of the Marketplace. To Amazon's knowledge, none of these businesses collects and remits sales tax on sales by third parties on their sites. *See, e.g.*, TAX INFORMATION FOR GOOGLE PLAY PURCHASES, GOOGLE.COM, <https://support.google.com/googleplay/answer/2850368?hl=en> (last visited Feb. 15, 2017), Ex. 14; 2015 Sales and Use Tax Policy Changes, SEARS COMMERCE SERVICES.COM, <https://www.searscommerceservices.com/question/tax-nexus-changes> (last visited Feb. 15, 2017), Ex. 15; WALMART: HOW WE DETERMINE SALES TAX, http://help.walmart.com/app/answers/detail/a_id/36/~/how-we-determine-sales-tax (last visited Feb. 15, 2017), Ex. 16. Imposing disparate treatment on Amazon would be inappropriate and contrary to principles of fair competition.

Other online sites provide auction-related services similar to the Marketplace that do not result in sales tax collection and remittance obligations. Sites like eBay and StubHub offer third party sellers an online site to list their products (*e.g.*, tangible goods or tickets for sporting events or concerts) for sale by auction. The South Carolina Department of Revenue has explained that purchases made on these types of sites from out of state retailers are subject to the state's use tax, not to its sales tax. Specifically, in Ruling No. 09-17, the Department of Revenue stated that "the use tax is a tax that applies to purchases of tangible personal property from out-of-state retailers for use, storage or consumption in South Carolina, and includes purchases from retailers made via the Internet (retailers websites and *retailers sales on auction sites*). . . ." S.C. Dep't of Revenue Ruling No. 09-17 (Nov. 19, 2009) (emphasis added); *accord City of Chicago v. StubHub, Inc.*, 979 N.E.2d 844, 856 (Ill. 2011) (citation omitted) ("[O]nline auctioneers are not

distributors. They do not sell or resell tickets, or act as agents for their users, but rather simply provide a marketplace. They are one step removed from the actual transaction.”). Although not an auctioneer,⁷ the Marketplace operates under similar principles as an online auction site (i.e., permitting third party Merchants to sell their own products on an online site). The only relevant difference between the Marketplace and online auction sites is that some Merchants use the FBA service, and direct one of AFS’s subsidiaries to store, package, and ship their products. As discussed above, the Commissioner has ruled that when a retailer (i.e., a Merchant) uses a service like FBA, the retailer remains the seller, even if the service provider has a physical presence in South Carolina. S.C. Dep’t of Revenue Ruling No. 14-4 (Sept. 10, 2014), Ex. 12. Equally as important, for the Merchants in the MFN, their sale of a product in the Marketplace is all but indistinguishable from a third party’s sale using an online auction site. The price of a Merchant’s good in the Marketplace may be fixed rather than variable (like on an auction site), but this distinction is irrelevant to determining the identity of the seller. Because the services provided by Amazon Services are closely aligned to those of online auction sites, the same sales and use tax consequences should follow.

A third type of online service similar to the Marketplace is online food ordering and delivery sites like Seamless Web, Takeout Taxi, and Crimson 2 Go. These sites allow customers to view a list of dozens or even hundreds of restaurants, review each restaurant’s menu, place an order, and have a meal delivered to their home or office. Prices are established by the restaurant, not the website. Once the customer places the order, the website relays the order to the restaurant, collects payment from the customer, and remits the payment to the restaurant minus a

⁷ Amazon is not a broker or auctioneer under South Carolina law because it is not selling or auctioning property owned by others. See S.C. Code Ann. § 12-36-70(1)(a).

service fee. The website itself is often responsible for picking up the meal from the restaurant and delivering it to the customer, although this task may also be contracted to a separate party. At least two states reviewing these types of online services have concluded that the website is merely a service provider, and therefore not subject to any related sales tax collection and remittance obligations. See N.Y.S. Dep’t of Taxation and Fin., Advisory Op., TSB-A-14(27)S (Aug. 20, 2014) (Seamless Web ordering and delivery service); *Crimson 2 Go, LLC v. Alabama*, No. S. 16-118, 2016 WL 4091380 at *2 (Ala. Tx. Trib. Dep’t of Revenue, July 7, 2016) (Crimson 2 Go “markets and facilitates the sale of the food and also delivers the food, but the restaurants, and not the [site], sell the food to the customers.”). The Marketplace is analogous to these online restaurant ordering services—for every purchase, the Merchant’s identity is clear to the customer; the Merchant controls what products they offer, their price, and the product descriptions; and Amazon Services’s role is limited to providing various services such as payment processing and helping to facilitate delivery. Just as with the online restaurant ordering websites, these services amount to, at most, marketing and sales facilitation activities, and so do not trigger a sales tax collection and remittance obligation on the part of Amazon Services.

c) The South Carolina Supreme Court’s holding in *Travelscape* is inapplicable to Amazon Services

The South Carolina Supreme Court’s holding in *Travelscape* is inapplicable to Amazon Services. In *Travelscape*, South Carolina’s Supreme Court addressed the taxation of internet travel sites that allow customers to book hotel rooms with them instead of booking directly with a hotel. *Travelscape, LLC v. S.C. Dep’t of Revenue*, 705 S.E. 2d 28 (S.C. 2011). *Travelscape* contracted directly with hotels for fixed rates on rooms at their facilities, and then resold those rooms (often at much higher rates) to customers online. The hotel paid accommodations tax on

the rates the website had paid it for the rooms, but no tax was paid on the higher rates the customers had actually paid Travelscape for the rooms.

South Carolina imposes an accommodations tax on “every person engaged or continuing within [South Carolina] in the business of furnishing accommodations to transients for consideration.” S.C. Code Ann. 12-36-920(E). The Department of Revenue assessed Travelscape accommodations tax on the rates it charged customers for the hotel rooms booked on its site; Travelscape challenged this assessment in court. The question before the Court in *Travelscape* was whether the website was “engaged in the business” of “furnishing accommodations” within the state. The Court held that Travelscape was so engaged because it was in the business of providing hotel rooms within South Carolina. “While Travelscape does not physically provide accommodations, it is in the business of doing so.” *Travelscape*, 705 S.E. at 34. The Court also found that a sufficient nexus existed with the state to impose such a tax because Travelscape entered into agreements with the hotels in the State, sent representatives to visit hotels, and relied entirely on the hotels providing rooms in the State for its business. *Id.* The Court therefore concluded that the website should pay accommodations taxes on the elevated rates it charged its customers for the hotel rooms. *Id.* at 39.

Amazon Services’s business is distinguishable in numerous ways from that of Travelscape’s. First, the Court’s holding that taxation obligations may apply to businesses that do not have physical possession of the accommodations does not extend to tangible personal property. *Travelscape* applies only to real estate brokers and listing services, for example, who do not have physical possession of the real property they are selling. This is so because the South Carolina accommodations tax statute is imposed on those “engaged or continuing with this State in the business of furnishing accommodations.” In contrast, the definition of a “sale” of

tangible personal property in South Carolina specifically requires a transfer of possession and/or title; being in the business of selling property may therefore be a necessary condition to the imposition of the sales tax on tangible personal property sales, but it is not, by itself, a sufficient one. See S.C. Code Ann. 12-36-100.

Second, unlike Travelscape, Amazon does not contract with Merchants to purchase their products at a fixed rate and re-sell those products at a higher rate. Instead, the Merchants control nearly every aspect of their product listing: what, when, and how to list a product, the price at which it is listed, the quantity to list for sale, when to remove a listing, etc. Put simply, Amazon Services is not re-selling the Merchants' items; the Merchants are selling their own items in the Marketplace run by Amazon Services.

Third, with respect to each product, the Merchant remains in control of its sales and communicates directly with its customers about their orders, particularly for sales fulfilled through the MFN. This relationship is different than the relationship contemplated by the Court in *Travelscape*, in which the websites contracted with the hotels to sell the rooms to customers, without further control by the hotels.

Finally, and critically, there is no "tax gap" created when a Merchant sells a product in the Marketplace. More specifically, the Court in *Travelscape* was concerned about and addressed the "gap" created when a customer paid Travelscape a larger sum than Travelscape remitted to a hotel. A tax gap existed because the hotel remitted the accommodations tax based only on the amount the hotel received from Travelscape, not what Travelscape was actually paid by a customer. In the Marketplace, no such gap exists. The BSA between Amazon Services and the Merchants is not a price-setting arrangement. Merchants determine the prices of the products they sell in the Marketplace and customers pay that price. Amazon Services collects a fee for the

services it provides the Merchants, and pays applicable taxes associated with that fee.

Transferring the tax collection obligation from the seller-Merchant to Amazon would not close a taxation gap, as no such gap exists. Accordingly, the ruling in *Travelscape* is inapplicable. The policy rationale underlying that decision is not present here, the legal framework is different, and the facts are inapposite to those in *Travelscape*.

B. The “efficient administration” clause of the South Carolina Code is inapplicable, and its extension to Amazon Services would be inappropriate

South Carolina’s EA Provision, which in limited circumstances permits the Department of Revenue to re-characterize certain categories of entities or persons as “retailers” for sales tax purposes, is inapplicable to Amazon Services. Even if it were applicable, use of the EA Provision here to impose upon Amazon Services a sales tax collection and remittance obligation with respect to sales by the third party Merchants would be inappropriate because such application is unnecessary to efficiently administer South Carolina’s sales tax laws.

The EA Provision states:

The department, when necessary for the efficient administration of this chapter, may treat any salesman, representative, trucker, peddler, or canvasser as the agent of the dealer, distributor, supervisor, employer, or other person under whom they operate or from whom they obtain the tangible personal property sold by them, regardless of whether they are making sales on their own behalf or on behalf of the dealer, distributor, supervisor, employer, or other person. The department may also treat the dealer, distributor, supervisor, employer, or other person as a retailer for purposes of this chapter.

S.C. Code Ann. § 12-36-70(2)(b), flush language. Although broad, the Department of Revenue’s discretion to invoke the EA Provision is not unchecked. The provision is “manifestly intended to furnish means to the enforcement agency to prevent evasion of the tax. It vests in the Commission *limited discretionary power* when in its opinion, quoting, ‘it is necessary for the

efficient administration of this act.” *State ex rel. Roddey v. Byrnes*, 66 S.E. 2d 33, 44 (S.C. 1951) (emphasis added).

1. By its own terms, the EA Provision does not apply to Amazon Services

The EA Provision is inapplicable by its own terms. “Part of the limit [on the Department of Revenue’s discretionary power to invoke the efficient administration provision] is the restriction as to whom the Commissioner may classify as retailers for the purpose of the Act” *Id.* at 44. As an initial matter, the Department of Revenue may deem only a “Salesman, representative, trucker, peddler, or canvasser,” as an agent of a “dealer, distributor, supervisor, or other person.” S.C. Code Ann. § 12-36-70(2)(b), flush language.

First, Amazon Services is not a “salesman,” “representative,” “trucker,” “peddler,” or “canvasser,” as is required for re-characterization under the EA Provision:

- Salesman - Amazon Services is not a “salesman.” The Merchants sell their own products in the Marketplace. As described at length in Section IV.A.2, Amazon Services is not the seller of the Merchants’ products.
- Representative - Amazon Services is not a “representative” of the Merchants. The Merchants do not empower Amazon Services to sell the Merchants’ products on their behalf. *See* S.C. Code Ann. § 36-1-201(b)(33) (defining a representative as “a person empowered to act for another, including an agent, an officer of a corporation or association, and a trustee, executor or administrator of an estate”). As described previously, the Merchants decide what, when and how to sell a product, thereby controlling the entire sales process.
- Trucker - Amazon Services is not a “trucker.” The Merchants in the MFN fulfill their own orders utilizing common carriers. Even when Amazon Services fulfills orders through FBA, common carriers are again utilized to deliver the Merchants’ goods.
- Peddler - Amazon Services is not a “peddler” of the Merchants’ products. South Carolina does not define “peddler” or “canvasser” in its tax code. With respect to licenses and permits regarding fish, peddlers are described as “operating from vehicles, roadside stands, or other temporary locations.” S.C. Code Ann. § 50-5-360(F). The Supreme Court of South Carolina has defined a “peddler” as a person who “carrie[s] around from place to place for the purpose of selling, or offering for sale . . . commodities” or sells or offers to sell the same. *South Carolina v. Ivey*, 53 S.E. 428, 428 (S.C. 1906). Amazon does not carry the Merchants’ products from

place to place to sell these products from temporary locations, and is therefore not a “peddler.”

- Canvasser - Amazon is not a “canvasser” on behalf of the Merchants. South Carolina does not define “canvasser” in its statutes. In *State v. Tidwell*, the Supreme Court of South Carolina described a person as a “traveling newspaper canvasser.” *State v. Tidwell*, 84 S.E. 778, 779 (S.C. 1915). In *Standard Register Co. v. Kerrigan*, the Supreme Court of South Carolina cited the case *Briggs v. Butler*, which included the following list of persons: “salesmen, agents, canvassers and other employees who come into personal contact with their employer’s customers . . .” *Standard Register Co. v. Kerrigan*, 119 S.E.2d 533, 537 (S.C. 1961). Amazon does not go door-to-door to customers to solicit sales of the Merchants’ products and is therefore not a “canvasser.”

Second, even if Amazon Services was a salesman, representative, trucker, peddler or canvasser, the EA Provision’s terms are clear that it may be invoked only if Amazon Services (i) operates “under” the Merchants, or (ii) if Amazon Services obtains the property sold by the Merchants. Amazon Services does neither.

As to whether Amazon Services operates “under” the Merchants, the BSA is a service contract—it does not create an agency or other relationship whereby Amazon Services operates under or on behalf of the Merchants. The relationship between Amazon Services and the Merchants does not exhibit any of the characteristics of an agency relationship, which exists where the Principal has the right to control the conduct of his agent, the manner and means of the particular work or undertaking, and the conduct of business at a particular premises. *See e.g., Jamison v. Morris*, 385 S.C. 215, 219 (S.C. 2009) (citing *Watkins v. Mobil Oil Corp.*, 291 S.C. 62, 65-66 (S.C. Ct. of Appeals 1986) (collecting cases)). To determine whether an agency relationship exists under South Carolina law, the “key question” is whether the alleged principal has “the right or power to direct the manner or means of the purported agent’s work.” *Id.* at 222. The relationship between the Merchants and Amazon Services does not exhibit any of these characteristics. Consistently, the terms of the BSA explicitly disclaim any agency relationship, stating that Amazon Services and the Merchants are “independent contractors and nothing in

th[e] [A]greement will create any partnership, joint venture, agency, franchise, sales representative, or employment relationship between” the parties. BSA § 13, Ex. 6. Based on a review of the foregoing facts, and in light of a similar statutory scheme, the Virginia Department of Taxation found that Amazon Services was not an agent of the Merchants. Virginia Dep’t of Taxation Ruling (Aug. 23, 2013), Ex. 13. The same result should follow here.

Finally, Amazon Services does not “obtain” the products sold by the Merchants. As detailed in Sections IV.A.1 and IV.A.2, at no point during a sale does Amazon Services ever obtain title to a Merchant’s products. Moreover, for products fulfilled through the MFN, Amazon never obtains possession of the products. Only when a Merchant uses the FBA service does a subsidiary of AFS (not Amazon Services) take possession of the product. Even then, the AFS subsidiary’s possession is temporary (the product is merely stored at a fulfillment center on behalf of the Merchant), conditional (the product is subject to return upon the Merchant’s request), and compensated (the Merchant pays Amazon Services in exchange for storage of the Merchant’s products).

Because Amazon Services is not a “salesman,” “representative,” “trucker,” “peddler,” or “canvasser,” and because Amazon Services neither operates under the Merchants nor obtains the products they sell, the EA Provision is inapplicable by its own terms. It cannot be used to deem Amazon Services as a retailer and impose upon it a sales tax collection and remittance obligation.

2. Application of the EA Provision is inappropriate because it is not necessary to administer the sales tax more efficiently

Even if the EA Provision was applicable (and it is not), its use by the Department of Revenue would be inappropriate here, as it is not necessary for the efficient administration of tax. First, deeming Amazon Services a retailer is not “necessary” to the extent the designation

would be used to collect a tax that is not actually owed. An out-of-state Merchant does not owe sales tax on sales into South Carolina because they lack a physical presence in the state. The dormant commerce clause of the U.S. Constitution requires physical presence to create a nexus with a state such that the state may impose a tax collection and remittance obligation. *See Quill v. North Dakota*, 504 U.S. 298, 308 (1992). In the absence of a sales tax, a customer may still owe a tax, but it is a use tax, not a sales tax. S.C. Code Ann. § 12-36-1350; *see also* S.C. Revenue Ruling No. 09-17, S.C. Dep’t of Revenue (Nov. 19, 2009) (“[T]he use tax is a tax that applies to purchases of tangible personal property from out-of-state retailers for use, storage or consumption in South Carolina, and includes purchases from retailers made via the Internet (retailers websites and retailers sales on auction sites) . . .”).

Merchants are frequently located outside South Carolina, and lack a nexus with the state and therefore also lack an obligation to remit sales tax to South Carolina. This is particularly the case for the Merchants in the MFN, whose only contact with the state is via a common carrier who delivers their product into South Carolina. Even for the Merchants who use the FBA service, products they sell into South Carolina are not necessarily stored in a fulfillment center located in the state. To the contrary, a Merchant’s goods may be stored in one of any number of fulfillment centers around the country, such that, again, the only contact with South Carolina is through a common carrier delivering the goods. Imposing a sales tax collection and remittance obligation on Amazon Services where such an obligation would not be imposed on the out of state seller (i.e., the Merchant) is little more than an end-run around the dormant commerce clause and applicable Supreme Court authority. *See Quill*, 504 U.S. at 308. Put differently, South Carolina has an extensive sales and use tax code, which provides definitions of “sales,” “retailers,” and other key terms. To allow the EA Provision to be read broadly enough to include

the role that Amazon Services plays in Merchant sales would allow the exception to swallow all of these rules.

Second, for Merchants that do have a physical presence in South Carolina, there is no reason to deem Amazon Services as a retailer because the Merchants can collect and remit the sales tax owed on all of their sales in the state. Having Merchants collect and remit applicable sales taxes in this manner is more efficient because they are in the best position to know where they have a physical presence, and to know the destination of their shipments. This is particularly the case for the Merchants who fulfill orders through the MFN, as the Merchants provide shipping services on their own, and communicate with customers directly.

Lastly, and as described above, there is no gap in taxation that results from collecting tax from the Merchants rather than from Amazon Services. In *Travelscape*, a policy concern of the Court was that collecting only from the hotels resulted in a gap in tax collection, between what the customer paid and what the hotel received. That concern is not present here—whether the state collects tax from the Merchant or Amazon, the gross proceeds are the same and therefore the sales tax owed is the same. There is simply no tax gap that might support the Commissioner’s exercise of the EA Provision.

C. The Notice violates Amazon Services’s federal constitutional rights

The South Carolina sales tax, as applied in the Notice, impermissibly violates Amazon Services’s due process rights and burdens interstate commerce. In sum, overlaying a state’s general authority to impose sales taxes is the United States Constitution. The Constitution requires that state taxation be administered with due process of law, and that it not unduly burden interstate commerce. See U.S. Const. art. I, § 8, cl. 3; *id.* amend. XIV, § 1. Fundamentally, this requires that the imposition of any sales tax satisfy basic “nexus” requirements.

First, the due process clause of the Constitution requires that a seller have sufficient contacts with a state such that the seller has “fair warning” that they will be subject to the state’s taxing jurisdiction. *Quill*, 504 U.S. at 312. “By requiring that individuals have ‘fair warning that a particular activity may subject [them] to the jurisdiction of a foreign sovereign,’ the Due Process Clause ‘gives a degree of predictability to the legal system that allows potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit.’” *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985) (quoting *Shaffer v. Heitner*, 433 U.S. 186, 218, (1977) (STEVENS, J., concurring in judgment) and *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980)). This aspect of the nexus requirement is satisfied if the seller directs purposeful contact with the state’s residents. See *Quill*, 504 U.S. at 308. The Notice violates the Due Process Clause because Amazon Services did not direct purposeful contact with the state when it provided services to the Merchants situated in states other than South Carolina, and indeed, around the world.

The proposed assessment is also unreasonable because a state may only exercise its taxing jurisdiction when it affords a taxpayer fair notice or “fair warning” that the taxpayer’s actions may subject it to such jurisdiction. See *Burger King*, 471 U.S. at 472. South Carolina failed to provide any such notice or fair warning that the services provided by Amazon Services would trigger a sales tax collection obligation. This is particularly the case where sales into South Carolina by out-of-state Merchants, independent of any services provided by Amazon Services, would not be subject to a sales tax obligation in the state. No statute, guidance, publication or case suggests that the provision of services similar to those provided by Amazon Services would alter, in such a drastic manner, the imposition of South Carolina’s sales tax.

South Carolina is the only state in the country to assert that Amazon Services is obligated to collect and remit sales taxes on behalf of the Merchants. By itself, this lack of notice and fair warning violates Amazon Services’s Constitutional rights. But, moreover, it appears that even the Department of Revenue did not anticipate this result. In public statements released by representatives of the Department of Revenue, the state “estimated \$13.8 million in additional revenue” following the expiration of the Distribution Center Sales Tax Exemption. Warren L. Wise, *2016 Delivers Taxes*, THE POST AND COURIER, Dec. 31, 2015, Ex. 4. To be certain, South Carolina received sales tax revenue from Amazon’s affiliates based on their Retail Sales—over \$40 million in 2016. The Notice now seeks to double the state’s new income by imposing a collection and remittance obligation on a set of transactions, many of which are not otherwise subject to taxation and for which the state never even thought itself entitled, at least based on its estimates announced one day before the sales tax exemption expired. The Constitution affords Amazon Services with due process rights that preclude this result.

Second, the dormant commerce clause of the Constitution imposes an additional nexus requirement in order to ensure that the state’s imposition of tax liability does not impermissibly burden interstate commerce. *See Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274 (1977). Specifically, a seller must be physically present within the taxing jurisdiction to satisfy the dormant commerce clause’s nexus requirement. *See Quill*, 504 U.S. 298, 308. Physical presence is required to avoid impermissibly burdening interstate commerce, given the voluminous number of taxing jurisdictions throughout the country. *Id.*

Imposing a tax collection obligation on Amazon Services violates the dormant commerce clause. The Supreme Court reemphasized in *Quill* that it draws a “sharp distinction . . . between mail-order sellers with [a physical presence in the taxing] State and those . . . who do no more

than communicate with customers in the State by mail or common carrier as part of a general interstate business.” *Quill*, 504 U.S. at 311 (quoting *National Geographic Society v. California Bd. of Equalization*, 430 U.S. 551, 559 (1977)). The bright-line rule requiring physical presence of a seller in a state in order to subject it to taxation in that state “encourages settled expectations and, in doing so, fosters investment by businesses and individuals.” *Quill*, 504 U.S. at 316. As described above, imposing a tax collection obligation on Amazon Services would be an arbitrary attempt to collect sales tax where it is not necessarily due. In short, the Notice is little more than a naked attempt at an end-run around the physical presence nexus requirement of the dormant commerce clause.

D. Federal law prohibits discriminatory taxes on electronic commerce

In addition to the Constitutional constraints that limit state taxation authority, the ITFA prohibits taxes that discriminate against online commerce. Under the ITFA, states may not discriminate against electronic commerce by taxing online transactions that would not be taxed if they were accomplished through traditional methods, by taxing transactions that are unique to the internet, or by shifting the tax collection burden to a party who would not bear that burden if the transaction was accomplished through traditional methods. See The Internet Tax Freedom Act (“ITFA”) Pub. L. No. 105-277, Title XI, 112 Stat. 2681 (1998) (enacted as a statutory note to 47 U.S.C. § 151); ITFA § 1101(a). Certain provisions of ITFA were subsequently amended by legislation enacted in 2004 and 2007. See Pub. L. No. 108-435, 118 Stat. 2615 (2004); Pub. L. No. 110-108, 121 Stat. 1024 (2007).⁸ A drafter of the law explained its purpose was to “give

⁸ In 2016, Congress made the ITFA’s moratorium on internet access taxes and on multiple and discriminatory taxes permanent. Trade Facilitation and Trade Enforcement Act of 2015, Pub. L. No. 114-125, Title IX, § 922 (2016).

Americans the reassurance they need that they will not be hit with unexpected taxes and tax collection costs from remote governments.” H.R. Rep. No. 105-570, pt. 1, at 29 (1998).

The assessment against Amazon Services violates the ITFA because it is a discriminatory tax in three respects. First, it taxes sales that would not be taxed if they were accomplished through traditional commerce. ITFA § 1105(2)(A)(i) prohibits states from imposing taxes on electronic commerce that are not generally imposed on transactions occurring through traditional means. Therefore if the same online sale being taxed would not be subject to sales tax if it was accomplished through non-electronic means, the tax is prohibited by the ITFA. If a customer in South Carolina were to purchase a product over the phone from an out-of-state merchant, that sale would not be subject to South Carolina sales tax. Therefore, taxing that same sale because it is accomplished via Amazon’s Marketplace is discriminatory and is prohibited by the ITFA.

Second, ITFA § 1105(2)(A)(iii) prohibits states from imposing an obligation to collect or remit taxes on someone other than the person or entity who would be responsible for collection and remittance if the transaction were made through traditional commerce. Amazon Services operates a website where the Merchants can sell their goods and buyers can purchase those goods from the Merchants. As discussed above, Amazon’s Marketplace is analogous to a mall, flea market, or craft fair operator who does not have a sales tax collection obligation. To shift the tax obligation from the Merchant to Amazon Services would violate the ITFA because in the analogous non-internet context it would obviously be the Merchant—and not the mall owner—that would be obligated to collect and remit sales tax.

Similarly, if a consumer bought a product over the phone from an out-of-state seller, the seller would not be subject to taxation. Instead, as explained on the Department’s website: “The purchase of tangible goods for use in South Carolina, on which no South Carolina sales and use

tax has been paid, are subject to the use tax. Examples include: catalog purchases, goods bought online over the internet, or furniture purchased out of state and delivered to South Carolina on which no (or insufficient) South Carolina tax was paid." S.C. Dep't of Revenue Website. To tax Amazon simply for providing the conduit through which these out-of-state sellers connect with S.C. consumers is to shift the tax obligation based solely on the fact that it occurred via a website—something that is prohibited under the ITFA.

Third, if no similar transactions exist offline (i.e., the transaction is unique to the internet), the ITFA prohibits taxing the transaction. If the Marketplace is not found to be similar to that of the traditional marketplaces discussed herein, it is unique to the online arena. If Merchant sales are inherently unique to the internet, Amazon Services's facilitation of these transactions cannot open it to liability for sales tax because to do so would be a discriminatory tax under the ITFA that prohibits taxing a transaction that is unique to the internet. The Marketplace functions as a type of internet bulletin board listing items for sale. The legislative history of the ITFA makes clear that such sites are unique to the internet and are thus protected from discriminatory taxes. H.R. Rep. No. 105-570 (1998).

V. CONCLUSION

For the foregoing reasons, the proposed assessment set forth in the Notice should be rejected.

Respectfully,



C. William Phillips

Sean M. Akins

ATTACHMENT 1

1350



STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE
**POWER OF ATTORNEY AND
DECLARATION OF REPRESENTATIVE**

SC2548
(Rev. 12/1/11)
3307

Part I Power of Attorney

1 Taxpayer Information (Note: Taxpayer(s) must sign and date this form on page 2, line 8.)

* Taxpayer name(s) and address (Type or print.) Amazon Services, LLC P.O. Box 81207 Seattle, WA 98108-1207	* Social Security number(s)	* Employer identification number
		Plan number (if applicable)
	* Daytime telephone number ()	Email Address

I hereby appoint(s) the following representative(s) as attorney(s)-in-fact:

2 Representative(s) (Type or print.)

* Name and address of specific individual C. William Phillips Covington & Burling LLP 620 Eighth Avenue New York, NY 10018-1406	* Telephone No. () 212 641-1061 Fax No. () Check if new: Address ☐ Telephone No. ☐
Name and address of specific individual Sean M. Akins Covington & Burling LLP 850 Tenth Street, NW Washington, DC 20001-4956	Telephone No. () 202 594-2222 Fax No. () Check if new: Address ☐ Telephone No. ☐
Name and address of specific individual	Telephone No. () Fax No. () Check if new: Address ☐ Telephone No. ☐

to represent the taxpayer(s) before the SC Department of Revenue for the following tax matters:

3 Tax Matters - A general reference to "All years," "All periods," or "All taxes" is not acceptable

* Type of Tax (Individual, Corporate, Withholding, Sales, etc.)	* Tax Form Number (SC1040, VRT1605, ST-3, etc.)	* Year(s) or Period(s) (See Line 3 instructions)
Sales and Use Tax	ST-3	2016 and following

4 Acts Authorized - A representative is an individual authorized to receive and inspect confidential tax information and to perform any and all acts on behalf of the taxpayer with respect to the tax matters described in line 3, including the authority to sign any agreements, consents or other documents. You may not use a Power of Attorney form to authorize a representative to receive refund checks. You may authorize a representative to sign a return ONLY as set forth in South Carolina Code Section 12-2-75.

List any specific additions to or deletions from the acts otherwise authorized in this power of attorney: _____

5 Receipt of Refund Checks - If you want to authorize a representative named in line 2 to receive, **BUT NOT TO ENDORSE OR CASH** refund checks, initial here _____ and list the name of that representative below

Name of representative to receive refund check(s): _____

33071028

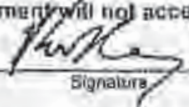
- 6 **Retention/Revocation of Prior Power(s) of Attorney** - The filing of this power of attorney automatically revokes all earlier power(s) of attorney on file with the South Carolina Department of Revenue for the same tax matters for years or periods covered by this document.

If you do not want to revoke a prior power of attorney, check here ☒

YOU MUST ATTACH A COPY OF ANY POWER OF ATTORNEY YOU WANT TO REMAIN IN EFFECT.

- 7 **Signature of Taxpayer(s)** - If a tax matter concerns a joint return, both husband and wife must sign if joint representation is requested; otherwise, see the instructions for SC2848 concerning signature of taxpayer(s). If signed by a corporate officer, partner, guardian, tax matters partner/person, LLC members, executor, receiver, personal representative, or trustee on behalf of the taxpayer, I certify that I have the authority to execute this form on behalf of the taxpayer.

* The Department will not accept a Power of Attorney that is not signed.

*  _____ * _____ Vice President, State Tax and Tax Operations
Signature Date Title (if applicable)

* **Kurt Lamp** _____
Print Name

Signature Date Title (if applicable)

Print Name

NOTICES AND COMMUNICATIONS

All Notices and Communications will be sent to the taxpayer only. However, if you are unable to forward a copy to your named representative, you may contact our office for assistance.

Part II Declaration of Representative

I declare that:

- * I am authorized to represent the taxpayer(s) identified in Part I for the tax matter(s) specified; and
- * I am one of the following:
 - a Attorney - a member in good standing of the bar of the highest court of the jurisdiction shown below.
 - b Certified Public Accountant - duly qualified to practice as a certified public accountant in the jurisdiction shown below.
 - c Enrolled Agent - enrolled as an agent under the Requirements of the US Treasury Department Circular No. 231.
 - d Officer - a bona fide officer of the taxpayer organization.
 - e Full-Time Employee - a full-time employee of the taxpayer.
 - f Family Member - a member of the taxpayer's immediate family (i.e., spouse, parent, child, brother, or sister).
 - g Return Preparer.
 - h Other, please explain: _____

* The Department will not accept a Declaration of Representative that is not signed.

I declare that this return and all attachments are true, correct and complete to the best of my knowledge and belief. To willfully furnish a false or fraudulent statement to the Department is a crime.

* Designation - Insert above letter (a-h)	* Jurisdiction (state)	* Signature	* Date
a	NY		12/23/16
a	DC		12/24/16

* Indicates required field.

33072021

1350



STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE
**POWER OF ATTORNEY AND
DECLARATION OF REPRESENTATIVE**

SC2848
(Rev. 12/1/11)
2907

Part I Power of Attorney

1 Taxpayer Information (Note: Taxpayer(s) must sign and date this form on page 2, line 5.)

* Taxpayer name(s) and address (Type or print.) Amazon Services, LLC P.O. Box 81207 Seattle, WA 98108-1207	* Social Security number(s)	* Employer identification number 71-0838319
		Plan number (if applicable)
	* Daytime telephone number ()	Email Address

hereby appoint(s) the following representative(s) as attorney(s)-in-fact:

2 Representative(s) (Type or print.)

* Name and address of specific individual Burnet R. Maybank, III Nexsen Pruet, LLC 1230 Main Street, Suite 700 Columbia, SC 29201	* Telephone No. () 540-2888 Fax No. () 759-9277 Check if new: Address ☐ Telephone No. ☐
Name and address of specific individual Jim Reurke Nexsen Pruet, LLC 1230 Main Street, Suite 700 Columbia, SC 29201	Telephone No. () 540-2830 Fax No. () 757-1475 Check if new: Address ☐ Telephone No. ☐
Name and address of specific individual	Telephone No. () Fax No. () Check if new: Address ☐ Telephone No. ☐

to represent the taxpayer(s) before the SC Department of Revenue for the following tax matters:

3 Tax Matters - A general reference to "All years," "All periods," or "All taxes" is not acceptable.

* Type of Tax (Individual, Corporate, Withholding, Sales, etc.)	* Tax Form Number (SC1040, W11605, ST-3, etc.)	* Year(s) or Period(s) (See Line 3 Instructions)
Sales and Use tax	ST-3	2016 and following

4 Acts Authorized - A representative is an individual authorized to receive and inspect confidential tax information and to perform any and all acts on behalf of the taxpayer with respect to the tax matters described in line 3, including the authority to sign any agreements, consents or other documents. You may not use a Power of Attorney form to authorize a representative to receive refund checks. You may authorize a representative to sign a return ONLY as set forth in South Carolina Code Section 12-2-75.

List any specific additions to or deletions from the acts otherwise authorized in this power of attorney: _____

5 Receipt of Refund Checks - If you want to authorize a representative named in line 2 to receive, **BUT NOT TO ENDORSE OR CASH** refund checks, initial here _____ and list the name of that representative below.

Name of representative to receive refund check(s): *

33071030

- 6 **Retention/Revocation of Prior Power(s) of Attorney** - The filing of this power of attorney automatically revokes all earlier power(s) of attorney on file with the South Carolina Department of Revenue for the same tax matters for years or periods covered by this document.

If you do not want to revoke a prior power of attorney, check here ☐ * ☐

YOU MUST ATTACH A COPY OF ANY POWER OF ATTORNEY YOU WANT TO REMAIN IN EFFECT.

- 7 **Signature of Taxpayer(s)** - If a tax matter concerns a joint return, both husband and wife must sign. If joint representation is requested; otherwise, see the instructions for SC2648 concerning signature of taxpayer(s). If signed by a corporate officer, partner, guardian, tax matters partner/person, LLC members, executor, receiver, personal representative, or trustee on behalf of the taxpayer, I certify that I have the authority to execute this form on behalf of the taxpayer.

* The Department will not accept a Power of Attorney that is not signed.

* Kurt Lamp Signature Date Vice President, State Tax and Tax Operations Title (if applicable)

* Kurt Lamp Print Name

Signature Date Title (if applicable)

Print Name

NOTICES AND COMMUNICATIONS

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I declare that:

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 - b Certified Public Accountant - duly qualified to practice as a certified public accountant in the jurisdiction shown below.
 - c Enrolled Agent - enrolled as an agent under the Requirements of the US Treasury Department Circular No. 230
 - d Officer - a bona fide officer of the taxpayer organization.
 - e Full-Time Employee - a full-time employee of the taxpayer.
 - f Family Member - a member of the taxpayer's immediate family (i.e., spouse, parent, child, brother, or sister).
 - g Return Preparer.
 - h Other, please explain.

* The Department will not accept a Declaration of Representative that is not signed.

I declare that this return and all attachments are true, correct and complete to the best of my knowledge and belief. To willfully furnish a false or fraudulent statement to the Department is a crime.

* Designation - Insert above letter (a-h)	* Jurisdiction (state)	* Signature	* Date
a	SC		9-28-16
a	SC		9-29-16

* Indicates required field.

33070026

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STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE
**POWER OF ATTORNEY AND
DECLARATION OF REPRESENTATIVE**

SC2646
(Rev. 12/1/11)
§307

Part I Power of Attorney

1 Taxpayer Information (Note: Taxpayer(s) must sign and date this form on page 2, line 8.)

* Taxpayer name(s) and address (Type or print.) Amazon Services LLC P.O. Box 81207 Seattle, WA 98108-1207	* Social Security number(s)	* Employer identification number 71-0938319
		Plan number (if applicable)
	* Daytime telephone number ()	Email Address

I hereby appoint(s) the following representative(s) as attorney(s) - in fact:

2 Representative(s) (Type or print.)

* Name and address of specific individual: Jeffrey A. Friedman Sutherland Asbill & Brennan LLP 700 Sixth St., NW, Suite No. 700 Washington, DC 20001	* Telephone No. (202) 383-0716 Fax No. (202) 637-3683 Check if new: Address ☐ Telephone No. ☐
Name and address of specific individual: Michele Borens Sutherland Asbill & Brennan LLP 700 Sixth St., NW, Suite No. 700 Washington, DC 20001	Telephone No. (202) 383-0936 Fax No. (202) 637-3683 Check if new: Address ☐ Telephone No. ☐
Name and address of specific individual:	Telephone No. () Fax No. () Check if new: Address ☐ Telephone No. ☐

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33071028

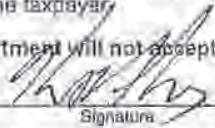
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Signature Date Title (if applicable)

* Kurt Lamp _____
Print Name

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Print Name

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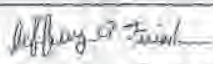
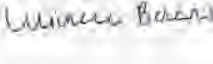
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- I am one of the following:
 - a. Attorney - a member in good standing of the bar of the highest court of the jurisdiction shown below.
 - b. Certified Public Accountant - duly qualified to practice as a certified public accountant in the jurisdiction shown below.
 - c. Enrolled Agent - enrolled as an agent under the Requirements of the US Treasury Department Circular No. 230.
 - d. Officer - a bona fide officer of the taxpayer organization.
 - e. Full-Time Employee - a full-time employee of the taxpayer.
 - f. Family Member - a member of the taxpayer's immediate family (i.e., spouse, parent, child, brother, or sister).
 - g. Return Preparer.
 - h. Other, please explain: _____

- * The Department will not accept a Declaration of Representative that is not signed.

I declare that this return and all attachments are true, correct and complete to the best of my knowledge and belief. To willfully furnish a false or fraudulent statement to the Department is a crime.

* Designation - (insert above letter (a-h))	* Jurisdiction (state)	* Signature	* Date
a	DC		9/29/2016
a	DC		9/29/2016

* Indicated required field.

33072026

EXHIBIT 1

[Press Releases](#) | [Investor Relations](#) | [Careers](#) | [Blog](#) | [Return to Amazon.com](#)[Transformations](#) | [Opportunities](#) | [Economic Impact](#) | [In the Community](#) | [Our Innovations](#) | [Working at Amazon](#) | [Sustainability](#)

HIGHLIGHTS

We use our Leadership Principles, every day, whether discussing ideas for new projects, deciding on the best solution for a customer's problem, or interviewing candidates.

Our first Leadership Principle is customer obsession—we believe leaders start with the customer and work backwards. They work vigorously to earn and keep customer trust. Although leaders pay attention to competitors, they *obsess* over customers.

Our Leadership Principles

Our Leadership Principles aren't just a pretty inspirational wall hanging. These Principles work hard, just like we do. Amazonians use them, every day, whether they're discussing ideas for new projects, deciding on the best solution for a customer's problem, or interviewing candidates. It's just one of the things that makes Amazon peculiar.

Customer Obsession

Leaders start with the customer and work backwards. They work vigorously to earn and keep customer trust. Although leaders pay attention to competitors, they *obsess* over customers.

Ownership

Leaders are owners. They think long term and don't sacrifice long-term value for short-term results. They act on behalf of the entire company, beyond just their own team. They never say "that's not my job."

Invent and Simplify

Leaders expect and require innovation and invention from their teams and always find ways to simplify. They are externally aware, look for new ideas from everywhere, and are not limited by "not invented here." As we do new things, we accept that we may be misunderstood for long periods of time.

Are Right, A Lot

Leaders are right a lot. They have strong business judgment and good instincts. They seek diverse perspectives and work to disconfirm their beliefs.

Hire and Develop the Best

Leaders raise the performance bar with every hire and promotion. They recognize exceptional talent, and willingly move them throughout the organization. Leaders develop leaders and take seriously their role in coaching others. We work on behalf of our people to invent mechanisms for development like Career Choice.

Insist on the Highest Standards

Leaders have relentlessly high standards—many people may think these standards are unreasonably high. Leaders are continually raising the bar and driving their teams to deliver high-quality products, services, and processes. Leaders ensure that defects do not get sent down the line and that problems are fixed so they stay fixed.

Think Big

Thinking small is a self-fulfilling prophecy. Leaders create and communicate a bold direction that inspires results. They think differently and look around corners for ways to serve customers.

Bias for Action

Speed matters in business. Many decisions and actions are reversible and do not need extensive study. We value calculated risk taking.

Frugality

Accomplish more with less. Constraints breed resourcefulness, self-sufficiency and invention. There are no extra points for growing headcount, budget size, or fixed expense.

Learn and Be Curious

Leaders are never done learning and always seek to improve themselves. They are curious about new possibilities and act to explore them.

Earn Trust

Leaders listen attentively, speak candidly, and treat others respectfully. They are vocally self-critical, even when doing so is awkward or embarrassing. Leaders do not believe their or their team's body odor smells of perfume. They benchmark themselves and their teams against the best.

Dive Deep

Leaders operate at all levels, stay connected to the details, audit frequently, and are skeptical when metrics and anecdote differ. No task is beneath them.

Have Backbone; Disagree and Commit

Leaders are obligated to respectfully challenge decisions when they disagree, even when doing so is uncomfortable or exhausting. Leaders have conviction and are tenacious. They do not compromise for the sake of social cohesion. Once a decision is determined, they commit wholly.

Deliver Results

Leaders focus on the key inputs for their business and deliver them with the right quality and in a timely fashion. Despite setbacks, they rise to the occasion and never settle.

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WORKING AT AMAZON

[ALL](#)[AMAZON EMPLOYEES](#)[OFFICES AND PROGRAMS](#)

AMAZON EMPLOYEE Tim Bomke Amazonian Recognized for Innovating for Veterans	AMAZON EMPLOYEE Lydia Flanders Amazon Associate Rises Through the Ranks—and Introduces the President	Diversity at Amazon Fostering Diversity and Community	AMAZON EMPLOYEE Ana Pinto da Silva A Designer's Quest for Community
AMAZON EMPLOYEE Melissa Taney	AMAZON EMPLOYEE Matt Choate	AMAZON EMPLOYEE Tiffany Niver	AMAZON EMPLOYEE Beryl Tomay

Saving a Family Treasure	Building Great Software in Pittsburgh	Be Curious and Explore	Delighting Customers with Compelling Products and Focused Execution
AMAZON EMPLOYEE Jules Graybill Helping a Broad Range of People to Thrive	AMAZON EMPLOYEE Crystal Ashley A Military Spouse's Opportunity to Give Back	AMAZON EMPLOYEE Udit Madan Finding What Makes You Tick	Career Choice Amazon Pre-Pays up to 95% of Tuition for Courses Related to In-Demand Fields
Hiring Military Veterans Actively Recruiting from the Armed Forces	AMAZON EMPLOYEE Sharie Warmack Career Choice Allowed her to Reach her Dream	Amazon's Urban Campus Our Headquarters in the Heart of Seattle	Happy Holidays from Amazon Our Associates are Grateful
Amazon Fulfillment Network Cutting Edge Technology, 50,000+ Employees	Our Leadership Principles The Principles That Guide Amazonians' Work	Our Internship Program Hiring Talented Student Interns	Our Global Offices Offices in More than 30 Countries
Kaizen Change for the Better	Dogs of Amazon A Canine-Loving Culture	Pioneering: A Passion for Inventing It's still "Day 1"	

Did you know? Once a year, we offer our fulfillment center associates up to \$5,000 to quit. We're upfront with employees that we hope they don't take the offer, but we want to give them a chance to think about what they really want. If they want to pursue a different career, we want to support that.

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EXHIBIT 2

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PRESS RELEASE

[<< Back](#)

Amazon.com Acquires BookSurge LLC

SEATTLE--(BUSINESS WIRE)--April 4, 2005--Leading online retailer Amazon.com, Inc. (Nasdaq:AMZN) today announced it has acquired BookSurge LLC, a global leader in inventory-free book printing and fulfillment, based in Charleston, South Carolina.

BookSurge maintains a catalog of thousands of titles that can be printed on-demand and are available for sale on Amazon.com. BookSurge offers its inventory-free book fulfillment network to publishers through BookSurge Publisher Services and to authors through BookSurge Publishing. In addition, retailers, wholesalers and distributors can leverage the BookSurge Direct wholesale platform.

"Print-on-demand has changed the economics of small-quantity printing, making it possible for books with low and uncertain demand to be profitably produced," said Greg Greeley, vice president of media products for Amazon.com. "BookSurge makes it possible to print books that appeal to targeted audiences, whether it's one copy or one thousand. Our new relationship with BookSurge will provide Amazon customers an ever-expanding selection of titles that are not available through other channels. Thanks to print-on-demand, 'out of print' is out of date."

Some examples of the variety of titles available on demand through BookSurge include foreign-language books such as the Arabic-language version of the international bestseller *The Da Vinci Code* and *Perez and Martina: A Puerto Rican Folktale*, by celebrated Latina librarian Pura Belpre. In addition, BookSurge offers selections from New York Times bestselling author Robert Morgan as well as popular non-fiction works, including books produced by the Museum of Modern Art.

Robert Holt, BookSurge's chief executive officer, said, "BookSurge is dedicated to creating better opportunities for authors and publishers, and our new relationship with Amazon.com will allow us to do just that. We are delighted to become a part of the Amazon family and look forward to helping even more publishers and authors find a profitable outlet for their books."

Terms of the acquisition were not disclosed.

About BookSurge

Founded in 2000, BookSurge serves thousands of authors, publishers, retailers, distributors and wholesalers by helping to realize potential revenue on out-of-print titles by printing books and fulfilling book orders more affordably. BookSurge sells books worldwide profitably through a robust Global Publishing System (GPS) software platform and a network of affiliates with fulfillment facilities worldwide. Information regarding these services can be located at www.booksurge.com, www.booksurgepublishing.com and www.booksurgepublisherservices.com.

About Amazon.com

Amazon.com, Inc., (Nasdaq:AMZN), a Fortune 500 company based in Seattle, opened on the World Wide Web in July 1995 and today offers Earth's Biggest Selection. Amazon.com seeks to be Earth's most customer-centric company, where customers can find and discover anything they might want to buy online, and endeavors to offer its customers the lowest possible prices. Amazon.com and other sellers offer millions of unique new, refurbished and used items in categories such as beauty, health and personal care, jewelry and watches, gourmet food, sports and outdoors, apparel and accessories, books, music, DVDs, electronics and office, toys and baby, and home and garden.

Amazon.com and its affiliates operate seven Web sites: www.amazon.com, www.amazon.co.uk, www.amazon.de, www.amazon.fr, www.amazon.co.jp, www.amazon.ca, and www.joyo.com.

As used herein, "Amazon.com," "we," "our" and similar terms include Amazon.com, Inc., and its subsidiaries, unless the context indicates otherwise.

Forward-Looking Statement

This announcement contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934. Actual results may differ significantly from management's expectations. These forward-looking statements involve risks and uncertainties that include, among others, risks related to potential future losses, significant amount of indebtedness, competition, management of growth, potential fluctuations in operating results, international expansion, fulfillment center optimization, seasonality, commercial agreements, acquisitions, and strategic transactions, foreign exchange rates, system interruption, consumer trends, inventory, limited operating

history, government regulation and taxation, fraud, and new business areas. More information about factors that potentially could affect Amazon.com's financial results is included in Amazon.com's filings with the Securities and Exchange Commission, including its Annual Report on Form 10-K for the year ended December 31, 2004, and all subsequent filings.

CONTACT: Amazon.com

Patty Smith, 206-266-7180

or

BookSurge

Lisa Ryan, 843-579-0000, ext. 134

Lisa.ryan@booksurge.com

SOURCE: Amazon.com

EXHIBIT 3

Amazon expanding in Lexington County

 www.coladaily.com/2016/11/29/amazon-expanding-lexington-county/

November 29, 2016

by [Terry Ward](#)

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Amazon is expanding its footprint and bringing more jobs to Lexington County.

The gigantic online retailer is moving its book-making operation to the Amazon site in the Saxe-Gotha Industrial Park, near Cayce.

The move is scheduled for Feb. 15, 2017, and will create around 150 jobs, company officials said.

The book-making operation is a part of an Amazon subsidiary called Createspace currently based in North Charleston.

“We’re pleased Amazon has confidence in its operation in Lexington County and wants to bring more (investment) here,” said Lexington County Council chairman Todd Cullum. He said the move is part of the county’s efforts to be pro-growth and business-friendly.

Cullum also noted the Amazon addition will go into a different building from the existing million-square-foot fulfillment center.

Amazon detailed the relocation in a letter Monday to the S.C. Department of Labor. The book-making operation is being moved to be closer to the company’s statewide hub here in the Midlands.

Amazon’s Createspace subsidiary is a self-publishing service for authors and artists who are not signed by agents or publishers. It provides a service to make not only books, but also CDs and DVDs on-demand. The service used to be called BookSurge, a company that started in the Lowcountry and later bought by Amazon.

The Amazon Fulfillment Center opened in 2011 in Lexington County, just off of Interstate 77 at the 12th Street Extension.

Amazon has three centers in South Carolina: the one in Lexington County, one in North Charleston, and another in Spartanburg. The company announced it would hire 120,000 seasonal employees, corporation-wide, in October. Currently, there are more than 5,000 permanent



Photos by Terry Ward



Amazon's massive facility near Cayce is set to expand next year.

Amazon employees in South Carolina, along with seasonal hires.

Elimination of the jobs in North Charleston was disclosed in an online post by the S.C. Department of Employment and Workforce, also on Monday. Amazon said it would give the 149 affected North Charleston employees a chance to take a job elsewhere before the warehouse is closed.

Comments

Comments

EXHIBIT 4

http://www.postandcourier.com/business/delivers-taxes-amazon-must-collect-s-c-sales-taxes-corporate/article_538512e9-3536-591a-b423-11364ccbfb3a.html

2016 delivers taxes Amazon must collect S.C. sales taxes, corporate break also ends Amazon 'in a league of its own' in online sales E-commerce giant claims almost 25% of retail sales growth

Warren L. Wise Dec 31, 2015



Amazon must begin collecting sales taxes from online sales in South Carolina, starting Friday.

[Buy Now](#)

South Carolina shoppers are supposed to pay state sales taxes for their online purchases under the honor system. Many don't.

They won't have a choice starting Friday for purchases they make through Amazon, the world's largest online retailer.

A tax break passed by state lawmakers in 2011 expires on Jan. 1, putting South Carolina in line with other states where officials cut similar deals to induce the company to make investments and create jobs.

Requiring Amazon to collect taxes on its in-state sales could add tens of millions of dollars to South Carolina's treasury in 2016, Max Behlke, the National Conference of State Legislatures' manager of state and federal relations, told the Associated Press recently.

S.C. Department of Revenue officials aren't that optimistic.

"According to information from the State Revenue and Fiscal Affairs Office, an estimated \$13.8 million in additional revenue is expected for the state of South Carolina," said spokeswoman Bonnie Swingle.

Amazon fought collecting sales taxes from its customers for years, citing U.S. Supreme Court decisions that a state can't require a company to collect the tax unless it has a "physical presence" in the state.

In 2011, the S.C. Legislature approved a 4½-year tax break for the Seattle-based company if it agreed to build a distribution center in Lexington County. Another was later built in Spartanburg.

That tax break ends Friday, when Amazon will have to begin collecting sales taxes from its South Carolina customers and passing the revenue onto the state.

2/14/2017 2016 delivers taxes Amazon must collect S.C. sales taxes, corporate break also ends Amazon 'in a league of its own' in online sales E-commerce giant c...

While Amazon doesn't yet collect taxes in South Carolina, by law shoppers are still responsible for paying the state what they don't pay online when they file their income tax returns, but many people ignore the requirement.

Amazon officials did not return phone and email messages Thursday.

Reach Warren L. Wise at 843-937-5524 or twitter.com/warrenlancewise.

EXHIBIT 5

Controversial Amazon SC tax break set to expire in 2016

 www.thestate.com/news/local/article13930880.html

By CASSIE COPE - ccope@thestate.com

The clock is ticking on a key incentive that helped bring Amazon to Lexington County.

By CASSIE COPE - ccope@thestate.com

The clock is ticking on a key incentive that helped bring Amazon to Lexington County.

On Jan. 1, 2016, Amazon must start collecting sales taxes on purchases made in South Carolina unless the General Assembly extends an exemption granted to the Internet giant when it located a distribution center in Lexington in 2011.

Four years ago, the tax exemption sharply divided state leaders.

Then-new Gov. Nikki Haley, a Lexington Republican, opposed the tax break, infuriating Lexington County Republicans and others who were anxious to land more than 1,000 new jobs in the wake of the Great Recession.

This time, however, even its supporters say it is time for the tax break to lapse, putting Amazon on a level playing field with traditional brick-and-mortar retailers who collect sales taxes.

If Amazon does begin collecting sales taxes, it will add about \$11.1 million a year to the state's \$7.5 billion in general fund revenues, according to the state Revenue and Fiscal Affairs Office.

Of that \$11.1 million, \$1.9 million would go toward education, which could help lawmakers as they respond to a Supreme Court ruling that says the state must do more for children in poor S.C. schools. The rest would be available to put a small dent in other budget priorities, including the state's multi-billion-dollar deficit in money needed for road and bridge repairs.

'Unfair advantage'

The sales tax exemption was sponsored in 2011 by state Rep. Kenny Bingham, R-Lexington, who said recently that Amazon had not contacted him about an extension.

The exemption is in place through 2015 as long as Amazon maintains at least 1,500 Lexington County jobs with health benefits or Congress does not pass a law requiring collection of the tax.

"The tax exemption that Amazon has enjoyed the last five years, quite frankly, was permitted and allowed by Congress because of their ... lack of legislation that would address sales tax across state lines," said former Lexington Mayor Randy Halfacre, adding that hundreds of millions of dollars in state and federal taxes are not collected nationwide on online purchases.

Concerns about the fairness of the tax break given Amazon helped fuel opposition to the incentive in 2011.

State Rep. Gary Simrill, R-York, was one of 20 lawmakers to oppose the deal. Simrill said the deal gave Amazon an unfair competitive advantage over brick-and-mortar stores that have to collect sales taxes.

"Competition is good," Simrill said. "But the government should not give one company an unfair advantage that another company is not allowed."

'The honor system'

In addition, any sales tax not collected is revenue the state loses, Simrill said.

S.C. residents who make purchases from Amazon still are required to pay the sales tax, even if Amazon does not collect it. Amazon notifies the customers how much they have spent, telling them they are supposed to pay the amount due on their state income taxes.

But some do not.

“It didn’t remove anyone’s tax liability,” Simrill said. “It just changed it to the honor system.”

Still, the tax exemption “allowed the state to basically acquire a very large global company that has provided thousands of jobs to the Midlands,” said Halfacre, president of the Greater Lexington Chamber of Commerce, who advocated for the Amazon exemption in 2011.

Amazon also received a free site, lower property tax rates on its equipment, state job tax credits and repeal of Lexington County’s longtime ban on Sunday morning sales, a ban that was lifted to facilitate Amazon’s round-the-clock operations.

All but the repeal of the Sunday sales restrictions are standard incentives for major employers.

‘All companies should pay sales tax’

Halfacre said the Amazon distribution center has been a catalyst for economic development in Lexington County.

Bingham said he gets phone calls all the time from people who want to work at the Amazon distribution center.

Still, with the exemption coming to an end after 2015, Halfacre said Amazon should start to collect sales taxes.

“All companies should pay sales tax, just like the brick-and-mortar companies do,” Halfacre said. “But, when laws (do not require) it, I don’t blame them for looking for the exemption.”

Related content

[Local](#)

Suggested for you

EXHIBIT 6

Amazon Services Business Solutions Agreement

General Terms

Welcome to **Amazon Services Business Solutions**, a suite of optional services for sellers including: [Selling on Amazon](#), [Amazon Webstore](#), [Fulfillment by Amazon](#), [Amazon Clicks](#), and [Transaction Processing Services](#).

THIS AMAZON SERVICES BUSINESS SOLUTIONS AGREEMENT (THE "**AGREEMENT**") CONTAINS THE TERMS AND CONDITIONS THAT GOVERN YOUR ACCESS TO AND USE OF THE SERVICES AND IS AN AGREEMENT BETWEEN YOU OR THE BUSINESS YOU REPRESENT AND AMAZON. BY REGISTERING FOR OR USING THE SERVICES, YOU (ON BEHALF OF YOURSELF OR THE BUSINESS YOU REPRESENT) AGREE TO BE BOUND BY THE TERMS OF THIS AGREEMENT, INCLUDING THE SERVICE TERMS AND PROGRAM POLICIES THAT APPLY FOR EACH COUNTRY FOR WHICH YOU REGISTER OR ELECT TO USE A SERVICE (IN EACH CASE, THE "**ELECTED COUNTRY**").

As used in this Agreement, "**we**," "**us**," and "**Amazon**" means the applicable Amazon Contracting Party and any of its applicable Affiliates, and "**you**" means the applicant (if registering for or using a Service as an individual), or the business employing the applicant (if registering for or using a Service as a business) and any of its Affiliates. Capitalized terms have the meanings given to them in this Agreement. If there is a conflict among terms in this Agreement, the Program Policies will prevail over any applicable Service Terms and the General Terms, and the applicable Service Terms will prevail over the General Terms.

1. Enrollment.

To begin the enrollment process, you must complete the registration process for one or more of the Services. Use of the Services is limited to parties that can lawfully enter into and form contracts under applicable law (for example, the Elected Country may not allow minors to use the Services). As part of the application, you must provide us with your (or your business') legal name, address, phone number and e-mail address. We may at any time cease providing any or all of the Services at our sole discretion and without notice.

2. Service Fee Payments; Receipt of Sales Proceeds.

Fee details are described in the applicable Service Terms and Program Policies. You are responsible for all of your expenses in connection with this Agreement. To use a Service, you must provide us with valid credit card information from a credit card or credit cards acceptable by Amazon ("**Your Credit Card**") as well as valid bank account information for a bank account or bank accounts acceptable by Amazon (conditions for acceptance may be modified or discontinued by us at any time without notice) ("**Your Bank Account**"). You will use only a name you are authorized to use in connection with a

Service and will update all of the information you provide to us in connection with the Services as necessary to ensure that it at all times remains accurate, complete and valid. You authorize us (and will provide us documentation evidencing your authorization upon our request) to verify your information (including any updated information), to obtain credit reports about you from time to time, to obtain credit authorizations from the issuer of Your Credit Card, and to charge Your Credit Card or debit Your Bank Account for any sums payable by you to us (in reimbursement or otherwise). All payments to you will be remitted to Your Bank Account through a banking network or by other means specified by us.

For any amounts you owe us, we may (a) charge Your Credit Card or any other payment instrument you provide to us; (b) offset any amounts that are payable by you to us (in reimbursement or otherwise) against any payments we may make to you; (c) invoice you for amounts due to us, in which case you will pay the invoiced amounts upon receipt; (d) reverse any credits to Your Bank Account; or (e) collect payment or reimbursement from you by any other lawful means. Except as provided otherwise, all amounts contemplated in this Agreement will be expressed and displayed in the Local Currency, and all payments contemplated by this Agreement will be made in the Local Currency. If we discover erroneous or duplicate transactions, then we reserve the right to seek reimbursement from you by deducting from future payments owed to you, charging Your Credit Card, or seeking such reimbursement from you by any other lawful means.

IF WE DETERMINE THAT YOUR ACTIONS OR PERFORMANCE MAY RESULT IN RETURNS, CHARGEBACKS, CLAIMS, DISPUTES, OR OTHER RISKS, THEN WE MAY IN OUR SOLE DISCRETION WITHHOLD ANY PAYMENTS TO YOU UNTIL THE COMPLETION OF ANY RELATED INVESTIGATION. IF WE DETERMINE THAT YOUR ACCOUNT HAS BEEN USED TO ENGAGE IN DECEPTIVE, FRAUDULENT, OR ILLEGAL ACTIVITY, THEN WE MAY IN OUR SOLE DISCRETION PERMANENTLY WITHHOLD ANY PAYMENTS.

As a security measure, we may, but are not required to, impose transaction limits on some or all customers and sellers relating to the value of any transaction or disbursement, the cumulative value of all transactions or disbursements during a period of time, or the number of transactions per day or other period of time. We will not be liable to you: (i) if we do not proceed with a transaction or disbursement that would exceed any limit established by us for a security reason, or (ii) if we permit a customer to withdraw from a transaction because an Amazon Site or Service is unavailable following the commencement of a transaction.

3. Term and Termination.

The term of this Agreement will start on the date of your completed registration for or use of a Service, whichever occurs first, and continue until terminated by us or you as provided in this Agreement (the "**Term**"). We may terminate or suspend this Agreement or any Service for any reason at any time by notice to you. You may terminate this Agreement or any Service or the Promotion Site for any reason at any time by the means then specified by Amazon. Termination or

suspension of a Service will not terminate or suspend any other Service unless explicitly provided. Upon termination, all rights and obligations of the parties under this Agreement will terminate, except that Sections 2, 3, 4, 5, 6, 7, 8, 9, 11, 14, 15, 16 and 18 will survive termination. Any terms that expressly survive according to the applicable Service Terms will also survive termination.

4. License.

You grant us a royalty-free, non-exclusive, worldwide, perpetual, irrevocable right and license to use, reproduce, perform, display, distribute, adapt, modify, re-format, create derivative works of, and otherwise commercially or non-commercially exploit in any manner, any and all of Your Materials, and to sublicense the foregoing rights to our Affiliates and operators of Amazon Associated Properties; provided, however, that we will not alter any of Your Trademarks from the form provided by you (except to re-size trademarks to the extent necessary for presentation, so long as the relative proportions of such trademarks remain the same) and will comply with your removal requests as to specific uses of Your Trademarks (provided you are unable to do so using standard functionality made available to you via the applicable Amazon Site or Service); provided further, however, that nothing in this Agreement will prevent or impair our right to use Your Materials without your consent to the extent that such use is allowable without a license from you or your Affiliates under applicable law (e.g., fair use under United States copyright law, referential use under trademark law, or valid license from a third party).

5. Representations.

You represent and warrant to us that: (a) if you are a business, you are duly organized, validly existing and in good standing under the Laws of the country in which your business is registered and that you are registering for the Service(s) within such country; (b) you have all requisite right, power and authority to enter into this Agreement, perform your obligations, and grant the rights, licenses and authorizations in this Agreement; (c) any information provided or made available by you or your Affiliates to Amazon or its Affiliates is at all times accurate and complete; and (d) you and all of your subcontractors, agents and suppliers will comply with all applicable Laws in your performance of your obligations and exercise of your rights under this Agreement.

6. Indemnification.

You release us and agree to indemnify, defend and hold harmless us, our Affiliates, and our and their respective officers, directors, employees, representatives and agents against any claim, loss, damage, settlement, cost, expense or other liability (including, without limitation, attorneys' fees) (each, a **"Claim"**) arising from or related to: (a) your actual or alleged breach of any obligations in this Agreement; (b) any of Your Sales Channels other than Amazon Sites and Amazon Associated Properties, Your Products (including their offer, sale, performance and fulfillment), Your Materials, any actual or alleged infringement of any Intellectual Property Rights by any of the foregoing, and any

personal injury, death or property damage related thereto; (c) Your Personnel (including any act or omission of Your Personnel or any Claim brought or directed by Your Personnel); or (d) Your Taxes. You will use counsel reasonably satisfactory to us to defend each indemnified Claim. If at any time we reasonably determine that any indemnified Claim might adversely affect us, we may take control of the defense at our expense. You may not consent to the entry of any judgment or enter into any settlement of a Claim without our prior written consent, which may not be unreasonably withheld.

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8. Limitation of Liability.

WE WILL NOT BE LIABLE (WHETHER IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE, PRODUCT LIABILITY OR OTHER THEORY) OR OTHERWISE) TO YOU OR ANY OTHER PERSON FOR COST OF COVER, RECOVERY OR RECOUPMENT OF ANY INVESTMENT MADE BY YOU OR YOUR AFFILIATES IN CONNECTION WITH THIS AGREEMENT, OR FOR ANY LOSS OF PROFIT, REVENUE, BUSINESS, OR DATA OR PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT, EVEN IF AMAZON HAS BEEN ADVISED OF THE POSSIBILITY OF THOSE COSTS OR DAMAGES. FURTHER, OUR AGGREGATE LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS

AGREEMENT OR THE TRANSACTIONS CONTEMPLATED WILL NOT EXCEED AT ANY TIME THE TOTAL AMOUNTS DURING THE PRIOR SIX MONTH PERIOD PAID BY YOU TO AMAZON IN CONNECTION WITH THE PARTICULAR SERVICE GIVING RISE TO THE CLAIM.

9. Insurance.

If the gross proceeds from Your Transactions exceed the applicable Insurance Threshold during each month over any period of three (3) consecutive months, or otherwise if requested by us, then within thirty (30) days thereafter, you will maintain at your expense throughout the remainder of the Term for each applicable Elected Country commercial general, umbrella or excess liability insurance with the Insurance Limits per occurrence and in aggregate covering liabilities caused by or occurring in conjunction with the operation of your business, including products, products/completed operations and bodily injury, with policy(ies) naming Amazon and its assignees as additional insureds. At our request, you will provide to us certificates of insurance for the coverage to the following address: c/o Amazon, P.O. Box 81226, Seattle, WA 98108-1226, Attention: Risk Management.

10. Tax Matters.

As between the parties, you will be responsible for the collection, reporting and payment of any and all of Your Taxes, except to the extent Amazon expressly agrees to receive taxes or other transaction-based charges in connection with tax calculation services made available by Amazon and used by you. You agree to and will comply with the [Tax Policies](#). All fees payable by you to Amazon under this Agreement or the applicable Service Terms are exclusive of any applicable taxes, and you will be responsible for paying Amazon any of Your Taxes imposed on such fees.

11. Confidentiality.

During the course of your use of the Services, you may receive information relating to us or to the Services, including but not limited to Amazon Transaction Information, that is not known to the general public ("**Confidential Information**"). You agree that: (a) all Confidential Information will remain Amazon's exclusive property; (b) you will use Confidential Information only as is reasonably necessary for your participation in the Services; (c) you will not otherwise disclose Confidential Information to any other Person; and (d) you will take all reasonable measures to protect the Confidential Information against any use or disclosure that is not expressly permitted in this Agreement. You may not issue any press release or make any public statement related to the Services, or use our name, trademarks or logo, in any way (including in promotional material) without our advance written permission, or misrepresent or embellish the relationship between us in any way.

12. Force Majeure.

We will not be liable for any delay or failure to perform any of our obligations under this Agreement by reasons, events or other matters beyond our reasonable control.

13. Relationship of Parties.

Subject to the Transaction Processing Service Terms (if the Elected Country for a Service is the United States), you and we are independent contractors, and nothing in this Agreement will create any partnership, joint venture, agency, franchise, sales representative, or employment relationship between us. You will have no authority to make or accept any offers or representations on our behalf. This Agreement will not create an exclusive relationship between you and us. Nothing expressed or mentioned in or implied from this Agreement is intended or will be construed to give to any person other than the parties to this Agreement any legal or equitable right, remedy, or claim under or in respect to this Agreement. This Agreement and all of the representations, warranties, covenants, conditions, and provisions in this Agreement are intended to be and are for the sole and exclusive benefit of Amazon, you, and customers. As between you and us, you will be solely responsible for all obligations associated with the use of any third party service or feature that you permit us to use on your behalf, including compliance with any applicable terms of use. You will not make any statement, whether on your site or otherwise, that would contradict anything in this section.

14. Use of Amazon Transaction Information.

You will not, and will cause your Affiliates not to, directly or indirectly: (a) disclose any Amazon Transaction Information (except that you may disclose that information solely as necessary for you to perform your obligations under this Agreement if you ensure that every recipient uses the information only for that purpose and complies with the restrictions applicable to you related to that information); (b) use any Amazon Transaction Information for any marketing or promotional purposes whatsoever, or otherwise in any way inconsistent with our or your privacy policies or applicable Law; (c) contact a Person that has ordered Your Product with the intent to collect any amounts in connection therewith or to influence that Person to make an alternative transaction; (d) disparage us, our Affiliates, or any of their or our respective products or services or any customer; or (e) target communications of any kind on the basis of the intended recipient being an Amazon Site user. In addition, you may only use tools and methods that we designate to communicate with Amazon Site users regarding Your Transactions, including for the purpose of scheduling, communicating, or cancelling the fulfillment of Your Products. The terms of this Section 14 do not prevent you from using other information that you acquire without reference to Amazon Transaction Information for any purpose, even if that information is identical to Amazon Transaction Information, provided that you do not target communications on the basis of the intended recipient being an Amazon Site user.

15. Suggestions and Other Information.

If you or any of your Affiliates elect to provide or make available suggestions, comments, ideas, improvements, or other feedback or materials to us in connection with or related to any Amazon Site or Service (including any related Technology), we will be free to use, disclose, reproduce, modify, license, transfer and otherwise distribute, and exploit any of the foregoing information or materials in

any manner. In order to cooperate with governmental requests, to protect our systems and customers, or to ensure the integrity and operation of our business and systems, we may access and disclose any information we consider necessary or appropriate, including but not limited to user contact details, IP addresses and traffic information, usage history and posted content.

16. Modification.

We may amend any of the terms and conditions contained in this Agreement at any time and at our sole discretion. Any changes will be effective upon the posting of such changes on Seller Central or on the applicable Amazon Site, and you are responsible for reviewing these locations and informing yourself of all applicable changes or notices. All notice of changes to the General Terms and the Service Terms will be posted for at least 30 days. Changes to Program Policies may be made without notice to you. You should refer regularly to Seller Central to review the current Agreement (including the Service Terms and Program Policies) and to be sure that the items you offer can be offered via the applicable Service. YOUR CONTINUED USE OF A SERVICE AFTER AMAZON'S POSTING OF ANY CHANGES WILL CONSTITUTE YOUR ACCEPTANCE OF SUCH CHANGES OR MODIFICATIONS.

17. Password Security.

Any password we provide to you may be used only during the Term to access Seller Central (or other tools we provide) to use the Services, electronically accept Your Transactions, and review your completed transactions. You are solely responsible for maintaining the security of your password. You may not disclose your password to any third party (other than third parties authorized by you to use your account in accordance with this Agreement) and are solely responsible for any use of or action taken under your password. If your password is compromised, you must immediately change your password.

18. Miscellaneous.

The Governing Laws will govern this Agreement, without reference to rules governing choice of laws or the Convention on Contracts for the International Sale of Goods. If the Elected Country is Japan, Amazon and you both consent that any dispute with Amazon or its Affiliates or claim relating in any way to your use of the Services or this Agreement as it relates to your use of the Services in Japan will be adjudicated in the Governing Courts, and you consent to exclusive jurisdiction and venue in the Governing Courts. If the Elected Country is the United States, Canada or Mexico, **Amazon and you both consent that any dispute with Amazon or its Affiliates or claim relating in any way to this Agreement or your use of the Services will be resolved by binding arbitration as described in this paragraph, rather than in court**, except that (i) you may assert claims in a small claims court that is a Governing Court if your claims qualify and (ii) you or we may bring suit in the Governing Courts, submitting to the jurisdiction of the Governing Courts and waiving our respective rights to any other jurisdiction, to enjoin infringement or other misuse of intellectual property rights.

There is no judge or jury in arbitration, and court review of an arbitration award is limited. However, an arbitrator can award on an individual basis the same damages and relief as a court (including injunctive and declaratory relief or statutory damages), and must follow the terms of this Agreement as a court would. To begin an arbitration proceeding, you must send a letter requesting arbitration and describing your claim to our registered agent, CSC Services of Nevada, Inc., 2215-B Renaissance Drive, Las Vegas, NV 89119. The arbitration will be conducted by the American Arbitration Association (AAA) under its rules, including the AAA's Supplementary Procedures for Consumer-Related Disputes. Payment of all filing, administration and arbitrator fees will be governed by the AAA's rules. We will reimburse those fees for claims totaling less than \$10,000 unless the arbitrator determines the claims are frivolous. Likewise, Amazon will not seek attorneys' fees and costs from you in arbitration unless the arbitrator determines the claims are frivolous. You may choose to have the arbitration conducted by telephone, based on written submissions, or in person in the county where you live or at another mutually agreed location. **Amazon and you each agree that any dispute resolution proceedings will be conducted only on an individual basis and not in a class, consolidated or representative action.** If for any reason a claim proceeds in court rather than in arbitration **Amazon and you each waive any right to a jury trial.**

You may not assign this Agreement, by operation of law or otherwise, without our prior written consent. Subject to that restriction, this Agreement will be binding on, inure to, and be enforceable against the parties and their respective successors and assigns. We may perform any of our obligations or exercise any of our rights under this Agreement through one or more of our Affiliates. Our failure to enforce your strict performance of any provision of this Agreement will not constitute a waiver of our right to enforce such provision or any other provision of this Agreement subsequently.

We have the right in our sole discretion to determine the content, appearance, design, functionality and all other aspects of the Services, including by redesigning, modifying, removing, or restricting access to any of them.

Because Amazon is not your agent (except for the limited purpose set out in the Transaction Processing Service Terms (if the Elected Country for a Service is the United States)), or the customer's agent for any purpose, Amazon will not act as either party's agent in connection with resolving any disputes between participants related to or arising out of any transaction.

We will send all notices and other communications regarding this Agreement to you at the e-mail addresses you designated for notifications and updates in your program application or within Seller Central, or by any other means then specified by Amazon. We may also communicate with you electronically and in other media, and you consent to such communications regardless of any "E-mail Preferences" (or similar preferences or requests) you may have indicated on the applicable Amazon Site, on Seller Central, or by any other means. You may change your e-mail addresses and certain other information in Seller Central. You will ensure that all of your information is up to date and

accurate at all times. You must send all notices and other communications relating to Amazon to our Merchant Services Team by using the [Contact Us](#) form.

This Agreement incorporates and you accept the applicable Service Terms and Program Policies, which Amazon may modify from time to time. If any provision of this Agreement is deemed unlawful, void, or for any reason unenforceable, then that provision will be deemed severable from these terms and conditions and will not affect the validity and enforceability of any remaining provisions. If the Elected Country is Canada, then it is the express wish of the parties that this Agreement and the applicable Service Terms and Program Policies have been drafted in English. (The following is a French translation of the preceding sentence: Si le pays de service est le Canada, les parties conviennent que la présente autorisation et tous les termes et conditions applicables s'y rattachant soient rédigés en anglais.) If the Elected Country is any country other than Japan, we may make available translations to this Agreement and the applicable Service Terms and Program Policies, but the English version will control. This Agreement represents the entire agreement between the parties with respect to the Services and related subject matter and supersedes any previous or contemporaneous oral or written agreements and understandings.

Definitions

As used in this Agreement, the following terms have the following meanings:

"Affiliate" means, with respect to any entity, any other entity that directly or indirectly controls, is controlled by, or is under common control with that entity.

"Amazon Associated Properties" means any website or other online point of presence, mobile application, service or feature, other than an Amazon Site, through which any Amazon Site, any Webstore Site, or products or services available on any of them, are syndicated, offered, merchandised, advertised or described.

"Amazon Contracting Party" means the party outlined below.

- If the Elected Country is Canada:

Service	Amazon Contracting Party
Selling on Amazon	Amazon Services International, Inc.
Selling on Amazon (if your account is enabled to list Optional Coverage Plans)	Amazon Services Contracts, Inc.
Fulfillment by Amazon	Amazon.com.ca, Inc.
Amazon Clicks	Amazon Services International, Inc.

- If the Elected Country is Japan:

Service	Amazon Contracting Party
Selling on Amazon	Amazon Services International, Inc.
Fulfillment by Amazon	Amazon Japan Logistics K.K.
Amazon Clicks	Amazon Services International, Inc.

- If the Elected Country is Mexico:

Service	Amazon Contracting Party
Selling on Amazon	Servicios Comerciales Amazon México S. de R.L. de C.V.
Fulfillment by Amazon	Servicios Comerciales Amazon México S. de R.L. de C.V.

- If the Elected Country is the United States:

Service	Amazon Contracting Party
Selling on Amazon	Amazon Services LLC
Selling on Amazon (if your account is enabled to list Optional Coverage Plans)	Amazon Services Contracts, Inc.
Fulfillment by Amazon	Amazon Services LLC
Amazon Webstore	Amazon Services LLC
Amazon Clicks	Amazon Services LLC
Transaction Processing Services	Amazon Payments, Inc., provided that if you registered for or used a Service prior to June 30, 2014, then Amazon Services LLC may in its discretion perform the Transaction Processing Services

"Amazon Site" means, as applicable, the CA Amazon Site, the JP Amazon Site, the MX Amazon Site, or the US Amazon Site.

"Amazon Transaction Information" means, collectively, Order Information and any other data or information acquired by you or your Affiliates from Amazon, its Affiliates, or otherwise as a result of this Agreement, the transactions contemplated by this Agreement, or the parties' performance under this Agreement.

"CA Amazon Site" means the website, the primary home page of which is identified by the url www.amazon.ca, and any successor or replacement of such website.

"Content" means copyrightable works under applicable Law.

"Excluded Products" means the items described on the applicable [Restricted Products pages](#) in Seller Central, any other applicable Program Policy, or any other information made available to you by Amazon.

"Governing Courts" means the applicable one of the following:

- ♦ the state or Federal court in King County, Washington (if the Elected Country is Canada, Mexico or the United States),
- ♦ Tokyo District Court or Tokyo Summary Court depending upon the amount of the claim made (if the Elected Country is Japan).

"Governing Laws" means the applicable one of the following:

- ♦ the laws of the State of Washington, United States together with the Federal Arbitration Act and other applicable federal law (if the Elected Country is Canada, Mexico or the United States),
- ♦ the laws of Japan (if the Elected Country is Japan).

"Insurance Limits" means the applicable one of the following:

- One Million Canadian Dollars (\$1,000,000) (if the Elected Country is Canada),
- One Hundred Million Japanese Yen (¥100,000,000) (if the Elected Country is Japan),
- Ten Million Mexican Pesos (\$10,000,000) (if the Elected Country is Mexico),
- One Million U.S. Dollars (\$1,000,000) (if the Elected Country is the United States).

"Insurance Threshold" means the applicable one of the following:

- Ten Thousand Canadian Dollars (\$10,000) (if the Elected Country is Canada),
- One Million Japanese Yen (¥1,000,000) (if the Elected Country is Japan),
- One Hundred Thousand Mexican Pesos (\$100,000) (if the Elected Country is Mexico),
- Ten Thousand U.S. Dollars (\$10,000) (if the Elected Country is the United States).

"Intellectual Property Right" means any patent, copyright, Trademark, domain name, moral right, trade secret right, or any other intellectual property right arising under any Laws and all ancillary and related rights, including all rights of registration and renewal and causes of action for violation, misappropriation or infringement of any of the foregoing.

"JP Amazon Site" means that website, the primary home page of which is identified by the url www.amazon.co.jp, and any successor or replacement of such website.

"Law" means any law, ordinance, rule, regulation, order, license, permit, judgment, decision or other requirement, now or in the future in effect, of any governmental authority (e.g. on a federal, state, or provincial level, as applicable) of competent jurisdiction.

"Local Currency" means the applicable one of the following:

U.S. Dollars (if the Elected Country is the United States),
Canadian Dollars (if the Elected Country is Canada),
Mexican Pesos (if the Elected Country is Mexico),
Japanese Yen (if the Elected Country is Japan).

"MX Amazon Site" means the website, the primary home page of which is identified by the url www.amazon.com.mx, and any successor or replacement of such website.

"Optional Coverage Plans" means warranties, extended service plans and related offerings, in each case as determined by us, that you offer.

"Order Information" means, with respect to any of Your Products ordered through an Amazon Site or a Webstore Site, the order information and shipping information that we provide or make available to you.

"Person" means any individual, corporation, partnership, limited liability company, governmental authority, association, joint venture, division or other cognizable entity, whether or not having distinct legal existence.

"Program Policies" means all terms, conditions, policies, guidelines, rules and other information on the applicable Amazon Site or on Seller Central, including those shown on the "Policies and Agreements" section of Seller Central or elsewhere in the "Help" section of Seller Central (and, for purposes of the Fulfillment by Amazon Service, specifically including the [FBA Guidelines](#)). All Program Policies applicable to Webstore by Amazon also apply to Amazon Webstore, unless otherwise specifically stated.

"Promotion Site" means that ecommerce website, the primary home page of which is identified by the URL www.sellername.amazonwebstore.com, in which "sellername" is a name representing you that we elect to include in such URL.

"Sales Proceeds" means the gross proceeds from any of Your Transactions, including all shipping and handling, gift wrap and other charges, and including taxes and customs duties to the extent specified in the applicable [Tax Policies](#).

"Seller Central" means the online portal and tools made available by Amazon to you, for your use in managing your orders, inventory and presence on a particular Amazon Site, a Webstore Site, or any other online point of presence.

"Service" means each of the following services: Selling on Amazon, Amazon Webstore, Fulfillment by Amazon, Amazon Clicks (including Amazon Product Ads, Amazon Sponsored Products and Amazon Text Ads), and, if the Elected Country for a Service is the United States, the Transaction Processing Services, together in each case with any related services and materials we make available.

"Service Terms" means the service terms applicable to each Service, which are made part of this Agreement upon the date you elect to register for or use the applicable Service, and any subsequent modifications we make to those terms.

"Technology" means any: (a) ideas, procedures, processes, systems, methods of operation, concepts, principles and discoveries protected or protectable under the Laws of any jurisdiction; (b) interfaces, protocols, glossaries, libraries, structured XML formats, specifications, grammars, data formats, or other similar materials; and (c) software, hardware, code, technology or other functional item.

"Trademark" means any trademark, service mark, trade dress (including any proprietary "look and feel"), trade name, other proprietary logo or insignia or any other source or business identifier, protected or protectable under any Laws.

"US Amazon Site" means that website, the primary home page of which is identified by the url www.amazon.com, and any successor or replacement of such website.

"Webstore Service" has the meaning described in the Webstore Service Terms.

"Webstore Site" has the meaning described in the Webstore Service Terms.

"Your Materials" means all Technology, Your Trademarks, Content, Your Product information, data, materials, and other items or information provided or made available by you or your Affiliates to Amazon or its Affiliates.

"Your Personnel" means any third party warranting, administering or otherwise involved in the offer, sale, performance or fulfillment of Your Products, including any of your employees, representatives, agents, contractors, or subcontractors.

"Your Product" means any product or service (including Optional Coverage Plans) that: (a) you offer through the Webstore Service or the Selling on Amazon Service; (b) is made available for advertising by you through the Amazon Clicks Service; or (c) is fulfilled or otherwise processed through the Fulfillment by Amazon Service.

"Your Sales Channels" means all sales channels and other means through which you or any of your Affiliates offers products or services, other than physical stores.

"Your Taxes" means any and all sales, goods and services, use, excise, premium, import, export, value added, consumption and other taxes, regulatory fees, levies (specifically including environmental levies) or charges and duties assessed, incurred or required to be collected or paid for any reason (a) in connection with any advertisement, offer or sale of products or services by you on or through or in connection with the Services; (b) in connection with any products or services provided for which Your Products are, directly or indirectly, involved as a form of payment or exchange; or (c) otherwise in connection with any action, inaction or omission of you or your Affiliates, or any Persons providing products or services, or your or their respective employees, agents, contractors or representatives, for which Your Products are, directly or indirectly, involved as a form of payment or exchange. Also, if the Elected Country is the United States, Mexico or Canada, as it is used in the Fulfillment by Amazon Service Terms, this defined term also means any of the types of taxes, duties, levies or fees mentioned above that are imposed on or collectible by Amazon or any of its Affiliates in connection with or as a result of fulfillment services including the storage of inventory or packaging of Your Products and other materials owned by you and stored by Amazon, shipping, gift wrapping or other actions by Amazon in relation to Your Products pursuant to the Fulfillment by Amazon Service Terms.

"Your Trademarks" means Trademarks of yours that you provide to us: (a) in non-text form for branding purposes; and (b) separate from (and not embedded or otherwise incorporated in) any product specific information or materials.

"Your Transaction" means any sale of Your Product(s) through an Amazon Site or any Webstore Site.

Selling on Amazon Service Terms

The Selling on Amazon Service ("**Selling on Amazon**") is a Service that allows you to offer certain products and services directly on the Amazon Sites (which, if the Elected Country is the United States, includes a Promotion Site that we may make available from time to time during the Term and on which certain of Your Products may be offered).

These Selling on Amazon Service Terms are part of the Agreement, but, unless specifically provided otherwise, concern and apply only to your participation in Selling on Amazon. BY REGISTERING FOR OR USING THE SELLING ON AMAZON SERVICE, YOU (ON BEHALF OF YOURSELF OR THE BUSINESS YOU REPRESENT) AGREE TO BE BOUND BY THE AGREEMENT, INCLUDING THESE SELLING ON AMAZON SERVICE TERMS. **NOTWITHSTANDING THE PREVIOUS SENTENCE, IF YOU HAVE ENTERED INTO A SEPARATE AGREEMENT THAT PERMITS YOU TO OFFER YOUR PRODUCTS THROUGH A PARTICULAR AMAZON SITE (E.G., A MERCHANTS@AMAZON.COM PROGRAM AGREEMENT, MERCHANTS @AMAZON.CO.JP PROGRAM AGREEMENT OR ANY PREDECESSOR OF THOSE AGREEMENTS), THEN TO THE EXTENT THAT YOU CONTINUE TO LIST AND SELL YOUR PRODUCTS ON THAT AMAZON SITE PURSUANT TO SUCH SEPARATE AGREEMENT, TRANSACTIONS OF YOUR PRODUCTS ON THAT AMAZON SITE AND ANY TAX SERVICES WE MAKE AVAILABLE UNDER THAT AGREEMENT ARE GOVERNED BY THE TERMS OF THAT AGREEMENT AND NOT BY THESE SELLING ON AMAZON SERVICE TERMS.**

S-1 Your Product Listings and Orders

S-1.1 Products and Product Information. You will provide in the format we require accurate and complete Required Product Information for each product or service that you offer through any Amazon Site and promptly update that information as necessary to ensure it at all times remains accurate and complete. You will also ensure that Your Materials, Your Products (including packaging) and your offer and subsequent sale of any of the same on any Amazon Site comply with all applicable Laws (including all minimum age, marking and labeling requirements) and do not contain any sexually explicit (except to the extent expressly permitted under our applicable Program Policies), defamatory or obscene materials. You may not provide any information for, or otherwise seek to offer any Excluded Products on any Amazon Sites; or provide any URL Marks for use, or request that any URL Marks be used, on any Amazon Site.

S-1.2 Product Listing; Merchandising; Order Processing. We will enable you to list Your Products on a particular Amazon Site, and conduct merchandising and promote Your Products as permitted by us (including via the Amazon Associated Properties or any other functions, features, advertising, or programs on or in connection with the applicable Amazon Site). We may use mechanisms that rate, or allow shoppers to rate, Your Products and your performance as a seller and Amazon may make these ratings and feedback publicly available. We will provide Order Information to you for each order of Your Products through the applicable Amazon Site. We will also receive all Sales Proceeds on your

behalf for each of these transactions and will have exclusive rights to do so, and will remit them to you in accordance with these Selling on Amazon Service Terms.

S-1.3 Shipping and Handling Charges. For Your Products ordered by customers on or through an Amazon Site that are not fulfilled using Fulfillment by Amazon, you will determine the shipping and handling charges subject to our Program Policies and standard functionality (including any category-based shipping and handling charges we determine, such as for products offered by sellers on the Individual selling plan and BMVD Products generally). When we determine the shipping and handling charges, you will accept them as payment in full for your shipping and handling. Please refer to the Fulfillment by Amazon Service Terms for Your Products that are fulfilled using Fulfillment by Amazon.

S-1.4 Credit Card Fraud. We will bear the risk of credit card fraud (i.e., a fraudulent purchase arising from the theft and unauthorized use of a third party's credit card information) occurring in connection with Your Transactions except in connection with Seller-Fulfilled Products that are not fulfilled strictly in accordance with the Order Information and Shipment Information. You will bear all other risk of fraud or loss. We may in our sole discretion withhold for investigation, refuse to process, restrict shipping destinations for, stop and/or cancel any of Your Transactions. You will stop or cancel orders of Your Products if we ask you to do so. If you have already transferred Your Products to a carrier or shipper when we ask you to stop or cancel an order, you will use commercially reasonable efforts to stop or cancel delivery of that order. You will refund any customer (in accordance with Section S-2.2) that has been charged for an order that we stop or cancel.

S-2 Sale and Fulfillment; Refunds and Returns.

S-2.1 Sale and Fulfillment. Other than as described in the Fulfillment by Amazon Service Terms for each Amazon Site for which you register or use the Selling on Amazon Service, you will: (a) source, offer, sell and fulfill your Seller-Fulfilled Products, and source and, offer and sell your Amazon-Fulfilled Products, in each case in accordance with the terms of the applicable Order Information, this Agreement, and all terms provided by you or us and displayed on the applicable Amazon Site at the time of the order and be solely responsible for and bear all risk for those activities; (b) package each of Your Products in a commercially reasonable manner complying with all applicable packaging and labeling requirements and ship each of Your Products on or before its Expected Ship Date; (c) retrieve Order Information at least once each business day; (d) only cancel Your Transactions as permitted pursuant to your terms and conditions appearing on the applicable Amazon Site at the time of the applicable order or as may be required under this Agreement; (e) fulfill Your Products throughout the Elected Country (except to the extent prohibited by Law or this Agreement); (f) provide to Amazon information regarding fulfillment and order status and tracking (to the extent available), in each case as requested by us using the processes designated by us, and we may make any of this information publicly available; (g) comply with all Street Date instructions; (h) ensure that you are the seller of each of Your Products; (i) include an order-specific packing slip, and, if applicable, any tax invoices, within each shipment of Your Products; (j) identify yourself as the seller of each of Your Products on

all packing slips or other information included or provided in connection with Your Products and as the Person to which a customer may return the applicable product; and (k) except as expressly permitted by this Agreement, not send customers emails confirming orders or fulfillment of Your Products. If any of Your Products are fulfilled using Fulfillment by Amazon, the Fulfillment by Amazon Service Terms for the applicable Amazon Site will apply to the storage, fulfillment and delivery of such Amazon-Fulfilled Products.

S-2.2 Cancellations, Returns and Refunds. For all of Your Products that are not fulfilled using Fulfillment by Amazon, you will accept and process cancellations, returns, refunds and adjustments in accordance with this Agreement and the Amazon Refund Policies for the applicable Amazon Site published at the time of the applicable order, and we may inform customers that these policies apply to Your Products. Except as otherwise described in the Program Policies, you will determine and calculate the amount of all refunds and adjustments (including any taxes, shipping and handling or other charges) or other amounts to be paid by you to customers in connection with Your Transactions, using functionality we enable for your account. This functionality may be modified or discontinued by us at any time without notice. You will route all payments to customers in connection with Your Transactions through Amazon. We will provide those payments to the customer (which may be in the same payment form originally used to purchase Your Product or as otherwise determined by us), and you will reimburse us for all amounts we pay. For all of Your Products that are fulfilled using Fulfillment by Amazon, the Amazon Refund Policies for the applicable Amazon Site published at the time of the applicable order will apply and you will comply with them. You will promptly provide refunds and adjustments that you are obligated to provide under the applicable Amazon Refund Policies and as required by Law, and in no case later than thirty (30) days after the obligation arises.

S-3 Problems with Your Products.

S-3.1 Delivery Errors and Nonconformities; Recalls. You are solely responsible for any non-performance, non-delivery, misdelivery, theft or other mistake or act in connection with the fulfillment of Your Products, except to the extent caused by: (a) credit card fraud for which we are responsible under [Section S-1.4](#); or (b) our failure to make available to you Order Information as it was received by us or resulting from address verification. Notwithstanding the previous sentence, for those of Your Products that are fulfilled using Fulfillment by Amazon, if any, the Fulfillment by Amazon Service Terms for the applicable Amazon Site will apply to non-delivery, misdelivery, theft or other mistake or act in connection with the fulfillment of those of Your Products. You are also responsible for any non-conformity or defect in, or any public or private recall of, any of Your Products or other products provided in connection with Your Products. You will notify us promptly as soon as you have knowledge of any public or private recalls of Your Products or other products provided in connection with Your Products.

S-3.2 A-to-z Guarantee and Chargebacks. If we inform you that we have received a claim under the "A-to-z Guarantee" offered on a particular Amazon Site, or any chargeback or other dispute,

concerning one of Your Transactions, you will deliver to us in a format and manner we specify: (a) proof of fulfillment of Your Product(s) (as applicable); (b) the applicable Amazon order identification number; (c) a description of Your Product(s) (as applicable); and (d) any terms provided by you or us and displayed on the Amazon Site at the time of the transaction in question. If you fail to comply with the prior sentence, or if the claim, chargeback, or dispute is not caused by: (i) credit card fraud for which we are responsible under Section S-1.4; or (ii) our failure to make your Order Information available as the same was received by us or resulting from address verification, then you will promptly reimburse us in accordance with the Service Fee Payments section of this Agreement for the amount of the customer purchase (including the Purchase Price, all associated shipping and handling charges and all taxes, but excluding any associated Referral Fees retained and not subject to refund by Amazon) and all associated credit card association, bank or other payment processing, re-presentment and/or penalty fees associated with the original purchase and any chargeback or refund, in each case to the extent paid or payable by us or our Affiliates. If the Elected Country is Japan and we receive a claim under the "A-to-z Guarantee" concerning one of Your Transactions and we determine that we are responsible for that claim then we will purchase the returned products from the customer.

S-4 Parity with Your Sales Channels.

Subject to this Section S-4, you are free to determine which of Your Products you wish to offer on a particular Amazon Site. You will maintain parity between the products you offer through Your Sales Channels and the products you list on any Amazon Site by ensuring that : (a) the Purchase Price and every other term of offer or sale of Your Product (including associated shipping and handling charges, Shipment Information, any "low price" guarantee, rebate or discount, any free or discounted products or other benefit available as a result of purchasing one or more other products, and terms of applicable cancellation, return and refund policies) is at least as favorable to Amazon Site users as the most favorable terms upon which a product is offered or sold via Your Sales Channels (excluding consideration of Excluded Offers); (b) customer service for Your Products is at least as responsive and available and offers at least the same level of support as the most favorable customer services offered in connection with any of Your Sales Channels (this requirement does not apply to customer service for payment-related issues on Your Transactions, which we will provide); and (c) the Content, product and service information and other information under Section S-1.1 regarding Your Products that you provide to us is of at least the same level of quality as the highest quality information displayed or used in Your Sales Channels. If you become aware of any non-compliance with (a) above, you will promptly compensate adversely affected customers by making appropriate refunds to them in accordance with Section S-2.2. For Amazon-Fulfilled Products, if the shipping and handling charges associated with the sale and fulfillment of any of Your Products offered on an Amazon Site are included (and not separately stated) in the item price listed for Your Product (collectively a **"Shipping Inclusive Purchase Price"**), then the parity obligation in (a) above will be satisfied if the Shipping Inclusive Purchase Price and each other term of offer or sale for the product on the Amazon Site are at least as favorable to Amazon Site users as the purchase price and each other term of offer or sale for

the product (including any and all separately stated shipping and handling charges) pursuant to which the product or service is offered or sold via any of Your Sales Channels.

S-5 Compensation.

You will pay us: (a) the applicable Referral Fees; (b) any applicable Variable Closing Fee; (c) the non-refundable Selling on Amazon Subscription Fee in advance each month; and (d) any other applicable fees described in this Agreement (including any applicable Program Policies). **"Selling on Amazon Subscription Fee"** means the fee specified as such on the Selling on Amazon [Fee Schedule](#) for the applicable Amazon Site at the time such fee is payable. With respect to each of Your Transactions: (i) **"Sales Proceeds"** has the meaning set out in this Agreement; (ii) **"Variable Closing Fee"** means the applicable fee, if any, as specified on the [Variable Closing Fee Schedule](#) for the applicable Amazon Site; and (iii) **"Referral Fee"** means the applicable fee based on the Sales Proceeds from Your Transaction through the applicable Amazon Site specified on the Selling on Amazon [Fee Schedule](#) for that Amazon Site at the time of Your Transaction, based on the categorization by Amazon of the type of product that is the subject of Your Transaction; provided, however, that Sales Proceeds will not include any shipping charges set by us in each of the following two cases: (y) in the case of Your Transactions that consist solely of products fulfilled using Fulfillment by Amazon; and (z) in the case of Media Products.

S-6 Remittance of Sales Proceeds & Refunds.

Except as otherwise stated in this Agreement, we will remit to you on a bi-weekly (14 day) (or at our option, more frequent) basis, which may vary for each Elected Country, any Sales Proceeds received by us or our Affiliates but not previously remitted to you as of the date that is two (2) business days prior to the date of remittance (the **"Remittance Calculation Date"**) (which you will accept as payment in full for Your Transactions), less: (a) the Referral Fees; (b) the applicable Variable Closing Fee; (c) any Selling on Amazon Subscription Fees; and (d) any other applicable fees described in this Agreement (including any applicable Program Policies). When you either initially provide or later change Your Bank Account information, the Remittance Calculation Date may be deferred by up to 14 days. You will not have the ability to initiate or cause payments to be remitted to you. For sellers that registered after October 30, 2011 and are on the Individual selling plan, the remittance amount will not include Sales Proceeds from the 14-day period before the date of remittance. If you refund money to a customer in connection with one of Your Transactions, and the refund is routed through us (or our Affiliate), on the next available Remittance Calculation Date we will refund to you the amount of the Referral Fee paid by you to us attributable to the amount of the customer refund (including refunded taxes and customs duties only to the extent specified in the applicable [Tax Policies](#)), less the Refund Administration Fee for each of Your Products refunded that is not a BMVD Product, which amount we may retain as an administrative fee; provided, however, that in the case of a complete refund of Sales Proceeds for a Media Product, we will refund to you the full amount of any Variable Closing Fee paid by you to us (and in the case of a partial refund of Sales Proceeds for a Media

Product, we will not refund to you any portion of any Variable Closing Fee paid by you to us). We will remit any amounts to be refunded by us pursuant to this subsection from time to time together with the next remittance to be made by us to you. **"Refund Administration Fee"** means the applicable fee described on the Refund Administration [Fee Schedule](#) for the applicable Amazon Site.

S-7 Control of Amazon Sites.

We have the right in our sole discretion to determine the content, appearance, design, functionality and all other aspects of the Amazon Sites, including by redesigning, modifying, removing or restricting access to any of them, and by suspending, prohibiting or removing any listing.

S-8 Effect of Termination.

Upon termination of these Selling on Amazon Service Terms in connection with a particular Amazon Site, all rights and obligations of the Parties under these Selling on Amazon Service Terms with regard to such Amazon Site will be extinguished, except that the rights and obligations of the Parties with respect to Your Transactions occurring during the Term will survive the termination or expiration of the Term.

Selling on Amazon Definitions

"Amazon-Fulfilled Products" means any of Your Products that are fulfilled using the Fulfillment by Amazon Service.

"Amazon Refund Policies" means the [return and refund policies](#) published on the applicable Amazon Site and applicable to products and services offered via that Amazon Site.

"BMVD Product" means any book, magazine or other publication, sound recording, video recording, and/or other media product in any format, including any subscription, in each case excluding any software product, computer game, and/or video game.

"Excluded Offer" means any discount, rebate, promotional offer, or other term of offer and/or sale that you: (a) have attempted to make available through a particular Amazon Site but that we do not honor or support (but only until such time as we honor or support the same on such Amazon Site); or (b) make available solely to Third Parties that either (i) purchase products solely for resale and who are not end users of such products (i.e., wholesale purchasers), or (ii) if the Elected Country is Canada, Mexico or the United States, have affirmatively elected and opted-in to participate in your or one of your Affiliates' membership-based customer loyalty or customer incentive programs.

"Expected Ship Date" means, with respect to any of Your Products, either: (a) the end of the shipping availability period (which begins as of the date on which the relevant order is placed by the customer), or the shipping availability date, as applicable, specified by you in the relevant

inventory/product data feed for Your Product; or (b) if you do not specify shipping availability information in such inventory/product data feed or that Your Product is in a product category that Amazon designates as requiring shipment within two (2) business days, two (2) business days after the date on which the relevant order is placed by the customer.

"Media Product" means any book, magazine or other publication, sound recording, video recording, software product, computer game, videogame, or other media product in any format, including any related subscription, offered through an Amazon Site.

"Purchase Price" means the total amount payable or paid for Your Product (including taxes and shipping and handling charges only to the extent specified in the applicable [Tax Policies](#)).

"Remittance Calculation Date" is defined in [Section S-6](#).

"Required Product Information" means, with respect to each of Your Products in connection with a particular Amazon Site, the following (except to the extent expressly not required under the applicable Program Policies): (a) description, including as applicable, location-specific availability and options, scheduling guidelines and service cancellation policies; (b) SKU and UPC/EAN/JAN numbers, and other identifying information as Amazon may reasonably request; (c) information regarding in-stock status and availability, shipping limitations or requirements, and Shipment Information (in each case, in accordance with any categorizations prescribed by Amazon from time to time); (d) categorization within each Amazon product category and browse structure as prescribed by Amazon from time to time; (e) digitized image that accurately depicts only Your Product, complies with all Amazon image guidelines, and does not include any additional logos, text or other markings; (f) Purchase Price; (g) shipping and handling charge (in accordance with our standard functionality); (h) any text, disclaimers, warnings, notices, labels, warranties or other content required by applicable Law to be displayed in connection with the offer, merchandising, advertising or sale of Your Product; (i) any vendor requirements, restocking fees or other terms and conditions applicable to such product that a customer should be aware of prior to purchasing the product; (j) brand; (k) model; (l) product dimensions; (m) weight; (n) a delimited list of technical specifications; (o) SKU and UPC/EAN/JAN numbers (and other identifying information as we may reasonably request) for accessories related to Your Product that is available in our catalog; (p) the state or country Your Product ships from; and (q) any other information reasonably requested by us (e.g., the condition of used or refurbished products).

"Seller-Fulfilled Products" means any of Your Products that are not fulfilled using the Fulfillment by Amazon Service.

"Shipment Information" means, with respect to any of Your Products, the estimated or promised shipment and delivery date.

"Street Date" means the date(s), if any, specified by the manufacturer, distributor and/or licensor of a product as the date before which specified information regarding such product (e.g., title of a book) should not be disclosed publicly, or such product should not be delivered or otherwise made available to customers.

"URL Marks" means any Trademark, or any other logo, name, phrase, identifier or character string, that contains or incorporates any top level domain (e.g., .com, .edu, .ca, .fr, .jp) or any variation of a top level domain (e.g., dot com, dotcom, net, or com).

"Your Transaction" is defined in the General Terms of this Agreement; however, as used in these Selling on Amazon Service Terms, it means any and all such transactions through Selling on Amazon only.

Webstore Service Terms

Amazon Webstore (which, for purposes of this Agreement, includes Webstore by Amazon, unless specifically stated otherwise) (the "**Webstore Service**") provides access to and use of an e-commerce website through which you can offer and sell Your Products (a "**Webstore Site**"). The Webstore Service is not currently available in Canada, Mexico or Japan.

These Webstore Service Terms are part of this Agreement, and, unless specifically provided otherwise, concern and apply only to your participation in the Webstore Service. BY REGISTERING FOR OR USING THE WEBSTORE SERVICE, YOU (ON BEHALF OF YOURSELF OR THE BUSINESS YOU REPRESENT) AGREE TO BE BOUND BY THE AGREEMENT, INCLUDING THESE WEBSTORE SERVICE TERMS.

W-1 Listing and Promotion.

Each sale of Your Products through your Webstore Site is a sale by you. You will determine what is for sale on your Webstore Site, but you may not list any product on the Webstore Site that is an Excluded Product. You will ensure that you list all of Your Products in accordance with this Agreement, including any applicable Program Policies.

W-2 Information.

You will provide in the format we require accurate and complete Webstore Required Product Information and all other information requested by us to process payments for you and to otherwise operate your Webstore Site. You will update such information as necessary to ensure it at all times remains accurate and complete. If you provide us with any images of Your Product, you will, unless we otherwise agree, first remove any logos, text or other marking included on the image except for any logos, text or other marking that actually appears on the product. You will either: (a) upload to us the "shipping confirmation files" as required by us, including all shipment notification, shipping status and order tracking information requested by us from time to time, and any other information as requested by us to process payments based on Your Product shipment status; provided, that if you are using Fulfillment by Amazon to fulfill any of your customer orders, the Fulfillment by Amazon Service Terms will apply with respect to such orders; or (b) use the Manage Your Orders tool in Seller Central to manage and upload the required "shipping confirmation files" from Seller Central. We may provide this shipment and payment related information to users of the Webstore Site. We will make available certain information and reports relating to Your Transactions as we determine and have no obligation to make available any other information. We may use mechanisms that rate, or may allow users to rate, your performance as a seller, and may post those ratings and feedback on the Webstore Site or any Amazon Site or otherwise make it publicly available. Any use on your Webstore Site of content displayed on an Amazon Site, or links to an Amazon Site, will be subject to the terms of the [Amazon Associates Operating Agreement](#).

W-3 Your Product Transactions.

W-3.1 General; Sale and Fulfillment. You will be solely responsible for, and bear all risk and liability for, sourcing, storing, selling, and fulfilling all of Your Products. As such, you are responsible for any non-conformity or defects in, damage to, or theft of or claims regarding the delivery or non-delivery of Your Products. You will handle such responsibilities, and agree to complete transactions for the items that you have listed in accordance with these Webstore Service Terms and applicable Program Policies. Notwithstanding anything in this [Section W-3.1](#), for those of Your Products that are fulfilled using Fulfillment by Amazon (if any), the Fulfillment by Amazon Service Terms will apply to our storage, fulfillment and delivery of Your Products. All sales of Your Products on or through the Webstore Site will be final and may not be cancelled or revoked by you except pursuant to the applicable terms and conditions that appear on the Webstore Site.

W-3.2 Order and Payment Processing. We will process all payments, refunds and adjustments for Your Transactions. Amazon's, or one of its Affiliates', name will appear on the customer's credit card statement (which may also display, at our option, your name). We will determine the time at which we process payments, refunds and adjustments for Your Transactions in our sole discretion. However, you are always the seller of record. We may withhold for investigation, or refuse to process, any of Your Transactions. We do not need to accept any particular form of order or payment for Your Product, or honor or accept any discounts, coupons, gift certificates, or other offers or incentives made available by you. We may in our sole discretion withhold for investigation or to refuse to process any transaction involving Your Products or any other products or services on or through the Webstore Site. We may use the services of one or more third party, processors or financial institutions in connection with the Webstore Service (each, a **"Processor"**). If total Sales Proceeds from Your Transactions exceed \$20,000 per month for any three consecutive months, you agree to the additional terms and conditions between you and the Processor(s) as provided in the [Credit Card Association Agreement](#). If you have entered into a separate agreement with one of our Affiliates that governs order and payment processing in connection with Your Transactions, you will be subject to the terms of that agreement notwithstanding anything to the contrary in this Agreement.

W-3.3 Fraud and Order Stops/Cancellations. We will bear the risk of credit card fraud (i.e. fraudulent purchases arising from the theft and unauthorized use of a third party's credit card information) occurring in connection with Your Transactions, except with respect to Your Transactions that you do not fulfill in accordance with the Order Information made available to you by us (including shipping Your Product only to the recipient and at the shipping address specified in the Order Information made available by Amazon), and you will bear all other risk of fraud or loss. You will promptly inform us of any changes to the product mix of Your Products or any pattern of fraudulent or other improper activities with respect to any of Your Product(s) that has resulted or may result in a higher incidence of fraud or other impropriety associated with transactions involving it (or them) than other similar products. You will stop or cancel orders of Your Products if we so direct (and if the customer has already been charged, you will execute the refunds for these orders) and will provide to

us telephone and email contact information for a designated contact available during business hours whom we can contact regarding fraud, order stops and cancellations and similar concerns, who will cooperate with us and who has access and ability promptly to cancel or stop orders from being shipped. We may restrict destinations to which you may ship Your Products sold on or through any Webstore Site.

W-3.4 Refunds and Returns. Except for those of Your Products, if any, that are fulfilled using Fulfillment by Amazon (in which case the Fulfillment by Amazon Service Terms will apply), you will accept and process returns of, and (using the functionality we make available to you) provide refunds and adjustments for, Your Products in accordance with these Webstore Service Terms and your policies posted on the Webstore Site at the time of the applicable sale, and you will calculate and refund any associated taxes required to be refunded. You will route all refund (and adjustment) payments through Amazon or its designated Affiliate. Amazon or its designated Affiliate will credit the applicable customer account, and you will reimburse Amazon for all amounts so credited. The functionality we make available to you for processing returns and adjustments may be modified or discontinued by us at any time without notice and is subject to the terms of this Agreement. Except for those of Your Products, if any, that are fulfilled using Fulfillment by Amazon (in which case the Fulfillment by Amazon Service Terms will apply), we have no obligation to accept any returns of any of Your Products.

W-3.5 Delivery Errors and Nonconformities; Product Recalls. You are responsible for any non-delivery, misdelivery, theft or other mistake or act in connection with the fulfillment of Your Products, except to the extent caused by (a) credit card fraud for which we are responsible under [Section W-3.3](#); or (b) our failure to make available to you Order Information as it was received by us or resulting from address verification. Notwithstanding the previous sentence, for those of Your Products that are fulfilled using Fulfillment by Amazon (if any), the Fulfillment by Amazon Service Terms will apply to non-delivery, misdelivery, theft or other mistake or act in connection with the fulfillment of those of Your Products. You are also responsible for any non-conformity or defect in, or any public or private recall of, any of Your Products. You will notify us promptly as soon as you have knowledge of any public or private recalls of Your Products.

W-3.6 A-to-z Guarantee and Chargebacks. If we inform you that we have received a claim under the "A-to-z Guarantee" (or any substantially consistent offer), or any chargeback or other dispute, concerning one of Your Transactions, you will deliver to us within seven (7) days: (a) proof of delivery of the applicable Your Product(s); (b) the applicable Amazon order identification number; and (c) a description of the applicable Your Product(s). If you fail to comply with the prior sentence, or if the claim, chargeback, or dispute is not caused by (i) credit card fraud for which we are responsible under [Section W-3.3](#), or (ii) our failure to make your Order Information available as the same was received by us or resulting from address verification, then you will promptly reimburse us for the amount of the customer purchase (including the Purchase Price, all associated shipping and handling charges and all taxes) and all associated credit card association, bank or other payment processing, re-presentment

and/or penalty fees associated with the original purchase and any chargeback or refund, in each case to the extent paid or payable by us or our Affiliates. We may require that you establish a separate reserve account (a "**Reserve**") to secure the performance of your payment obligations under this Agreement, in an amount as determined by us. Without limiting the foregoing, we may require a Reserve if you have a high rate of chargebacks, refunds, or other indicia of performance problems related to your use of the Webstore Service. The Reserve will be in an amount as determined by us to cover anticipated chargebacks or credit risk based on your processing history or such amount designated by our Processor(s) and the Reserves will be subject to the Transaction Processing Service Terms (if the Elected Country for a Service is the United States).

W-4 Customer Service.

W-4.1 General. The provisions in this Section W-4 apply only in connection with sales of Your Products through the Webstore Site that are not fulfilled using Fulfillment by Amazon. For customer service obligations pertaining to orders of Your Products using the Selling on Amazon Service or orders of Your Products fulfilled using Fulfillment by Amazon, the Service Terms applicable to those Services will apply. You will refer customer issues to us according to the responsibilities below, in a timely, professional and courteous manner and at the applicable "[Contact Us](#)" form, email address and/or phone number provided for such purpose by us. You will not establish direct phone or email transfer functionality of customer service contacts to us, forward customer emails to us, or disclose our customer service contact information unless in response to a customer contact concerning a customer service issue for which we are responsible under these Webstore Service Terms.

W-4.2 Our Customer Service Responsibilities. As between you and us, we will be solely responsible for all customer service issues relating to payment, credit card processing, debiting or crediting, and the "A-to-z Guarantee".

W-4.3 Your Customer Service Responsibilities. Unless provided otherwise elsewhere in these Webstore Service Terms, you will be solely responsible for all customer service issues relating to Your Products (including pricing, rebates, item information, availability, technical support, functionality and warranty), Your Product order fulfillment and shipping and handling, Your Product order cancellation by you or any customer, returns, refunds and adjustments, and feedback concerning experiences with your personnel, policies or processes. In performing customer service, you will always present yourself as a separate entity from us.

W-5 Data and Communications. We and you will co-own all the Customer Account Information and Webstore Transaction Information. Neither you nor we will need to pay any royalties or account to the other in connection with your or our use of any Customer Account Information or Webstore Transaction Information. You and your Affiliates will: (a) at all times comply with all Laws, including any Law related to the use of this type of information; and (b) comply with any applicable policies posted on the Webstore Site regarding use of this transaction and customer data. We are not liable for

protection or privacy of electronic mail or other information transferred through the Internet or any other network you or your customers may utilize, including without limitation in connection with the provision of the Webstore Service; or the back up of any of your files or data.

W-6 Pricing and Remittance.

W-6.1 Your Product Pricing and Terms of Sale Generally. You are free to determine the price for each of Your Products listed for sale on your Webstore Site.

W-6.2 Shipping & Handling Charges. You will determine shipping and handling charges for Your Products sold on or through the Webstore Site, but will comply with any shipping and handling charge Program Policies. If Your Product is fulfilled using Fulfillment by Amazon, this section will not apply and the Fulfillment by Amazon Service Terms will apply.

W-6.3 Remittance and Compensation.

W-6.3.1 Fees. You will pay us: (a) applicable Webstore Referral Fees; and (b) the applicable non-refundable Webstore Subscription Fee(s) in advance for each month of the term of this Agreement.

"Webstore Subscription Fee" means the applicable fee(s) specified on the [Webstore Fee Schedule](#) at the time such fee is payable. With respect to each of Your Transactions: (i) **"Sales Proceeds"** has the meaning set out in the General Terms of this Agreement; and (ii) **"Webstore Referral Fee"** means the applicable percentage of Sales Proceeds from Your Transaction through the Webstore Site specified on the [Webstore Fee Schedule](#) at the time of Your Transaction.

W-6.3.2 Remittance of Sales Proceeds. We will remit to you on a bi-weekly (14-day) (or at our option, more frequent) basis any Webstore Sales Proceeds received by us but not previously remitted to you as of the date that is two (2) business days prior to the date of remittance (the **"Remittance Calculation Date"**), less: (a) the Webstore Referral Fees due for such sums; and (b) any Webstore Subscription Fees due. You will accept our remittances under the previous sentence as payment in full for the sale and shipping and handling of Your Products.

W-6.3.3 Refunds. If you refund money to a customer in connection with Your Transaction, and the refund is routed through us, we will refund to you the amount of the Webstore Referral Fee paid by you to us attributable to the amount of the customer refund (excluding any refunded taxes), less the lower of (a) five dollars (\$5); or (b) twenty percent (20%) of the Webstore Referral Fee, which we may retain as an administrative fee. We will remit any amounts to be refunded by us under this subsection from time to time together with the next remittance to be made by us to you pursuant to [subsection W-6.3.1](#) above.

W-7 Provision and Use of the Webstore Service.

W-7.1 License to the Webstore Service and Amazon Materials. Subject to this Agreement (including, but not limited to, [Section W-7.2](#) (License Restrictions) and [Section W-7.5](#) (Messaging)), we grant you a limited, revocable, non-sublicenseable, non-assignable, non-exclusive and royalty-free license to: (a) access and use the Webstore Service and the Amazon Materials in the manner permitted by this Agreement; (b) install, copy, and use any Amazon Materials we may provide, solely in conjunction with your access to and use and operation of your Webstore Site; (c) use the Amazon Marks solely in conjunction with your use and operation of your Webstore Site and solely in accordance with the [Trademark Usage Guidelines](#); and (d) enable the access to and use of your Webstore Site by customers.

W-7.2 License Restrictions. You may not and may not authorize any other party to do the following to or with the Webstore Service, the Webstore Site or the Amazon Materials: (a) reverse engineer, decompile, or disassemble them; (b) modify or create derivative works based upon them in whole or in part; (c) distribute copies of them; (d) remove any proprietary notices or labels on them; (e) use any Public Software in any manner that requires, pursuant to the license applicable to such Public Software, that the Webstore Service or any Amazon Materials be disclosed, licensed, distributed or otherwise made available to anyone; or (f) resell, lease, rent, transfer, sublicense, or otherwise transfer rights to them. In addition to any other rights or remedies that we may have, any use in violation of this section will immediately terminate your right to use the Webstore Service, the Webstore Site, the Amazon Materials, and the Amazon Marks.

W-7.3 Ownership; Reservation of Rights. You acknowledge and agree that we (or our licensors, as applicable) own all right, title and interest in and to the Webstore Service, the Amazon Materials, and Amazon Marks, and, except as explicitly included in this Agreement, you do not, by virtue of this Agreement or otherwise, acquire any ownership interest or rights in or to the Webstore Service, the Amazon Materials, any Amazon Marks, or any other intellectual property or technology that we provide or use in connection with the Webstore Service. All licenses not expressly granted in these Webstore Service Terms are reserved and no other licenses, immunity or rights, express or implied are granted by us, by implication, estoppels or otherwise.

W-7.4 URLs.

W-7.4.1 General. Except as provided in [Section W-7.4.2](#), you will be responsible for securing all rights to the URL(s) for the Webstore Site, including maintaining the registration for the URLs with your domain name registrars. You will comply with our requirements regarding the URL(s) and its administration with the registrar so that we can provide the Webstore Service to you. You represent and warrant that the URLs used in connection with the Webstore Site does not violate any intellectual property rights or any other proprietary rights of any person. Except in connection with any URL provided by us as described in [Section W-7.4.2](#), you will not include "amazon", or any other Amazon

Mark or any variation or similar misspelling in any URL used in connection with the Webstore Site, or otherwise.

W-7.4.2 Amazon Provided URL. We may provide you with a URL to use in connection with your Webstore Site. If you choose to use it you will comply with our requirements for its administration.

W-7.5 Messaging. We will have the right to determine the use of any Amazon Marks and any messaging or notice on the Webstore Site, for example, we will control how our role in processing orders and payments is explained to the customer, and (if applicable) how our "A-to-z Guarantee" is described. The Webstore Site will also display privacy and customer account use and creation messaging, which will include any terms we may require. At a minimum, you will ensure that your privacy policy discloses that you use third party service providers to provide your Webstore Site and that your third party service providers will have access to customer information. Should we allow or require you to include any Amazon Marks or messaging, you will do so strictly in accordance with instructions we provide to you.

W-8 Effect of Termination.

Upon any termination of the term of this Agreement or these Webstore Service Terms, all rights and obligations of the parties under these Webstore Service Terms will terminate, except that: the rights and obligations of the parties under Sections W-2, W-3, W-4, W-5, W-6 and W-8 with respect to Your Transactions occurring prior to termination will survive such termination. Upon any termination of the term of this Agreement or these Webstore Service Terms, you will immediately cease and discontinue all use of the Amazon Marks.

W-9 Miscellaneous.

Your Representations; Compliance with Laws. In addition to your representation and warranties in Section 5 of the General Terms of this Agreement, you represent and warrant to us that: (a) all of Your Products and their packaging comply and will comply with all applicable marking and labeling requirements required by law; (b) none of Your Products are or will be produced or manufactured, in whole or in part, by child labor or by convict or forced labor; (c) you and all of your subcontractors, agents and suppliers involved in producing or delivering Your Products will strictly adhere to all applicable Laws of the Elected Country, its territories and all other countries where Your Products are produced or delivered, regarding the operation of their facilities and their business and labor practices, including without limitation working conditions, wages, hours and minimum ages of workers; (d) you will not, unless we otherwise agree, redirect any customers or prospective customers from the Webstore Site to any other sales channel, and will not use the Webstore Service for any purpose other than the offer or sale of Your Products as contemplated in this Agreement; (e) Your Materials, Your Products and your offer and subsequent sale of any of the same complies with all applicable Laws (including all marking and labeling requirements) and do not contain any defamatory, obscene or

sexually explicit materials (except to the extent expressly permitted under applicable Program Policies); (f) you will ensure that Your Transactions are made at no less than fair value under the antidumping laws of the United States and will otherwise comply with the antidumping laws of the United States, its territories and of all other countries where Your Products are produced, delivered, or intended to be sold; (g) in connection with the Webstore Service or your Webstore Site, you will not separately ask for or require any customers or prospective customers to provide any credit card, debit card, bank account, or other information related to a payment method; and (h) you will not, without our prior consent, use any third party payment service for the processing of payments for transactions associated with your Webstore Site.

Webstore Definitions

"Amazon Functionality" means all techniques, know-how, features and functionality specific to development of a website presence to display products loaded into the Amazon platform, including the following features and functions: search, browse, product detail display, shopping cart and credit card transaction processing, order/account lookup, and storefront administration & merchandising.

"Amazon Mark" is defined in the [Trademark Usage Guidelines](#).

"Amazon Materials" means: (a) the Amazon Functionality (including, without limitation, all related techniques, know-how, algorithms, materials, specifications and source code); and (b) all Webstore Service-related product information, APIs, and any distinctive trade dress and trade styles (including, without limitation, color schemes), proprietary fonts, and the design, formatting, organization and structure of screens and other elements included within the Webstore Site.

"Amazon Product" means any products that are sold and fulfilled by Amazon (or one of its Affiliates) on its own behalf.

"Amazon Transaction" means the sale of any Amazon Product through the Webstore Site for which Amazon (or its Affiliate) receives Amazon Transaction Revenues.

"Amazon Transaction Revenues" means: (a) the aggregate revenues (excluding taxes, bad debt, gift-wrapping charges, shipping and handling charges, or services charges and credit card processing fees) derived by Amazon and its Affiliates from sales of Amazon Products through the Webstore Site as provided in this Agreement; less (b) any revenues attributable to returned Amazon Products, if such revenues previously were included in "Amazon Transaction Revenues".

"Customer Account Information" means the following non-transaction-specific information you receive from Amazon prior to the expiration or termination of this Agreement with respect to customer accounts created or otherwise used to purchase Your Products on the Webstore Site: customer name, physical address, e-mail address and phone numbers. Notwithstanding the foregoing and for the avoidance of doubt, Customer Account Information does not include: (a) any Webstore Transaction

Information; (b) any credit card, other account or identifying number of, or any other information specifically concerning, any payment instrument or method; (c) sign-in credentials; (d) information that pertains specifically to functionality of the Webstore Site (e.g., personalization settings); or (e) user clickstream information.

"Public Software" means any software, documentation or other material that contains, or is derived (in whole or in part) from, any software, documentation or other material that is distributed as free software, open source software (e.g., Linux) or similar licensing or distribution models, including, but not limited to software, documentation or other material licensed or distributed under any of the following licenses or distribution models, or licenses or distribution models similar to any of the following: (a) the GNU General Public License (GPL); Lesser/Library GPL (LGPL), or Free Documentation License; (b) The Artistic License (e.g., PERL); (c) the Mozilla Public License; (d) the Netscape Public License; (e) the Sun Community Source License (SCSL); (f) the Sun Industry Standards License (SISL); (g) the BSD License; and (h) the Apache License.

"Shipment Information" means, with respect to any of Your Products, the estimated or promised shipment and/or delivery date.

"Webstore Required Product Information" means with respect to each of Your Products, the following: (a) a description of Your Product; (b) the UPC code (unless we otherwise agree), SKU number for Your Product, and any other identifying information about Your Product that we request; (c) information regarding the in-stock status, shipping availability period or shipping availability date, and Your shipping limitations or requirements (in each case, in accordance with any categorizations we prescribe from time to time); (d) the categorization of Your Product within each applicable Amazon browse structure that we prescribe from time to time; (e) a digitized image of Your Product (provided that you will first remove any logos, text or other marking included on such image except to the extent that such logos, text or other marking actually appear on Your Product); (f) the price for Your Product; (g) any text, disclaimers, warnings, notices, labels or other content required by applicable law to be displayed in connection with the offer, merchandising, advertising or sale of Your Product; (h) any vendor requirements, restocking fees or other terms and conditions applicable to such product that a customer should be aware of prior to purchasing the product; (i) brand; (j) model; (k) product dimensions; (l) weight; (m) a delimited list of technical specifications; (n) UPC code and SKU number (and other identifying information as Amazon may reasonably request) for accessories related to Your Product that are available in Amazon's catalog; and (o) any other information we reasonably request (e.g., the condition of used or refurbished products).

"Webstore Transaction Information" means the following information you receive from Amazon associated with any orders of Your Product through your Webstore Site: total transaction amount; order ID#; order item code; SKU; product name; quantity; price; and adjustments. Notwithstanding the foregoing and for the avoidance of doubt, Webstore Transaction Information does not include: (a) any Customer Account Information; (b) sign-in credentials; (c) user click-stream information; or (d)

any credit card or other account or identifying number of, or any other information specifically concerning, any payment instrument or method.

Fulfillment by Amazon Service Terms

Fulfillment by Amazon ("**FBA**") provides fulfillment and associated services for Your Products.

These FBA Service Terms are part of the Agreement, and, unless specifically provided otherwise, concern and apply only to your participation in FBA. BY REGISTERING FOR OR USING FBA, YOU (ON BEHALF OF YOURSELF OR THE BUSINESS YOU REPRESENT) AGREE TO BE BOUND BY THE AGREEMENT, INCLUDING THESE FBA SERVICE TERMS. You expressly agree that Amazon may engage its Affiliate(s) or a third party in order to complete one or more of the fulfillment and associated services outlined below.

If the Elected Country is Japan, the following applies to you: Notwithstanding anything to the contrary in the Agreement, if there should be any subject matter specified in the "Standard Storage Bailment Terms and Conditions (Hyoujun Soko Kitaku Yakkan – Otsu)" that is not specified in the Agreement, including these FBA Service Terms, upon your request, such provision will be determined by discussion and mutual agreement of the parties.

Fulfillment Services

F-1 Your Products

Once you are accepted into FBA, you must apply to register each product you offer that you wish to include in the FBA program. We may refuse registration in FBA of any product, including on the basis that it is an FBA Excluded Product or that it violates applicable Program Policies. You may at any time withdraw registration of any of Your Products from FBA.

F-2 Product and Shipping Information

You will, in accordance with applicable Program Policies, provide in the format we require accurate and complete information about Your Products registered in FBA, and will provide Fulfillment Requests for any Units fulfilled using FBA that are not sold through an Amazon Site ("**Multi-Channel Fulfillment Units**"). You will promptly update any information about Your Products in accordance with our requirements and as necessary so that the information is at all times accurate and complete.

F-3 Shipping to Amazon

F-3.1 Except as otherwise provided in [Section F-3.4](#) and [Section F-5](#), FBA is limited to Units that are shipped to and from fulfillment centers located within the applicable Elected Country, to be delivered to customers in the same Elected Country only. You will ship Units to us in accordance with applicable Program Policies. You will be responsible for all costs incurred to ship the Units to the shipping destination (including costs of freight and transit insurance) and Amazon will not pay any shipping costs except as provided in [Section F-3.2](#). You are responsible for payment of all customs, duties,

taxes and other charges. In the case of any improperly packaged or labeled Unit, we may return the Unit to you at your expense (pursuant to [Section F-7](#)) or re-package or re-label the Unit and charge you an administrative fee.

F-3.2 You will not deliver to us, and we may refuse to accept, any shipment or Unsuitable Unit. We may return or dispose of any Unsuitable Unit as provided in [Section F-7](#) (and you will be deemed to have consented to such action): (a) immediately if we determine in our sole discretion that the Unit creates a safety, health or liability risk to Amazon, our personnel or any third party; (b) if you fail to direct us to return or dispose of any Unsuitable Unit within thirty (30) days after we notify you that the Unit has been recalled; or (c) except as otherwise provided in this [Section F-3.2](#), if you fail to direct us to return or dispose of any Unsuitable Unit within ninety (90) days after we notify you that we are in possession of it. In addition, you will reimburse us for any expenses we incur in connection with any Unsuitable Units.

F-3.3 If the Elected Country is the United States or Mexico, we may, at our option, allow you to ship Units at your expense (as described in [Section F-9.2](#)) to fulfillment centers using discounted shipping rates that we may make available to you for certain carriers. In such event, you will use the processes and supply the information that we require for you to obtain such discounted rates. You also must comply with standard operating procedures, weight and size restrictions, and other shipping requirements of the applicable carriers. If we provide you with the estimated shipping costs prior to shipment, you acknowledge and agree that actual shipping costs may vary from such estimates. In addition, if the weight of the Unit, as determined by the applicable carrier, differs from that submitted by you to us for purposes of determining the estimated shipping costs, then: (a) you may be charged more than the estimated shipping costs if the carrier determines that such Unit weighs more than as submitted by you; or (b) you may be charged the full amount of the estimated shipping costs even if the carrier determines the weight to be less than that submitted by you. You will not use our carrier account information (e.g., carrier account number, amount of shipping rates, etc.) for any purpose, nor disclose such information to any third party, and you will protect such information as Amazon's confidential information in accordance with Section 11 of the General Terms of this Agreement. As between you, us and our carrier, you will be the shipper of record, and we will be the payer of record with respect to all Units shipped to us using such discounted rates. Title and risk of loss for any Unit shipped using discounted rates provided by us under this Section will remain with you, and our provision of such shipping rates will not create any liability or responsibility for us with respect to any delay, damage or loss incurred during shipment. You authorize the applicable carrier to provide us with all shipment tracking information.

F-3.4 If you ship Units from outside the applicable Elected Country to fulfillment centers, you will list yourself as the importer/consignee and nominate a customs broker. If Amazon is listed on any import documentation, Amazon reserves the right to refuse to accept the Units covered by the import documents and any costs assessed against or incurred by Amazon will be collected from Your Bank Account, deducted from amounts payable to you, or by other method at our election.

F-4 Storage

We will provide storage services as described in these FBA Service Terms once we confirm receipt of delivery. We will keep electronic records that track inventory of Units by identifying the number of Units stored in any fulfillment center. We will not be required to physically mark or segregate Units from other inventory units (e.g., products with the same Amazon standard identification number) owned by us, our Affiliates or third parties in the applicable fulfillment center(s). If we elect to commingle Units with such other inventory units, both parties agree that our records will be sufficient to identify which products are Units. We may move Units among facilities. If there is a loss of or damage to any Units while they are being stored, we will, as your sole remedy, reimburse you in accordance with the [FBA Guidelines](#), and you will, at our request, provide us a valid tax invoice for the compensation paid to you. If we reimburse you for a Unit, we will be entitled to dispose of the Unit pursuant to [Section F-7](#). This reimbursement is our total liability for any duties or obligations that we or our agents or representatives may have as a bailee or warehouseman, and your only right or remedy that you may have as a bailor. At all other times, you will be solely responsible for any loss of, or damage to, any Units. Our confirmed receipt of delivery does not: (a) indicate or imply that any Unit has been delivered free of loss or damage, or that any loss or damage to any Unit later discovered occurred after confirmed receipt of delivery; (b) indicate or imply that we actually received the number of Units of Your Product(s) specified by you for such shipment; or (c) waive, limit or reduce any of our rights under this Agreement. We reserve the right to impose, and change from time to time, scheduling restrictions and volume limitations on the delivery and storage of your inventory in fulfillment centers, and you will comply with any of these restrictions or limitations.

F-5 Fulfillment

As part of our fulfillment services, we will ship Units from our inventory of Your Products to the shipping addresses in the Elected Country included in valid customer orders, or submitted by you as part of a Fulfillment Request. We may ship Units together with products purchased from other merchants, including any of our Affiliates. We also may ship Units separately that are included in a single Fulfillment Request. If you elect to participate in our export fulfillment services, we will also ship Your Products that we determine to be eligible (each, a **"Foreign-Eligible Product"**) to Foreign Addresses within countries we determine to be eligible for foreign shipments, subject to the additional terms on foreign shipments in the applicable [FBA Guidelines](#).

F-6 Customer Returns

F-6.1 You will be responsible for and will accept and process returns of, and provide refunds and adjustments for, any Multi-Channel Fulfillment Units in accordance with the Agreement (including the applicable Program Policies).

F-6.2 We will receive and process returns of any Amazon Fulfillment Units that were shipped to addresses within the Elected Country in accordance with the terms of your Seller Agreement, these FBA Service Terms and the Program Policies. Any Sellable Units that are also Amazon Fulfillment Units and that are properly returned will be placed back into the inventory of Your Products in the FBA Program. We may fulfill customer orders for Your Products with any returned Amazon Fulfillment Units. Except as provided in Section F-7, you will retake title of all Units that are returned by customers.

F-6.3 Except as provided in Section F-5, we will, at your direction, either return or dispose of any Selling on Amazon Unit that is returned to us and that we determine is an Unsuitable Unit as provided in Section F-7. Without limitation of our rights under Section F-7.1, we may elect to return or dispose of that Unsuitable Unit as provided in Section F-7, and you will be deemed to have consented to our election if you fail to direct us to return or dispose of the Unsuitable Unit within ninety (90) days after we notify you of the Unsuitable Unit.

F-6.4 If Amazon receives a customer return of a Multi-Channel Fulfillment Unit, you will direct us to return or dispose of the Unit at your own cost failing which we may dispose of the Unit as provided in Section F-7.

F-7 Returns to You and Disposal

F-7.1 You may, at any time, request that Units be returned to you. We may return Units to you for any reason, including upon termination of these FBA Service Terms. These returned shipments will be sent to your designated shipping address that is within the Elected Country (or, at Amazon's sole discretion, your designated shipping address). If the address we have for you is outdated, incorrect or outside the Elected Country, or if we cannot make arrangements for you to pay for the return shipment, the Unit(s) will be deemed abandoned and we may elect to dispose of the Unit(s) as provided in this Agreement.

F-7.2 You may, at any time, request that we dispose of Units. We may dispose of any Unit we are entitled to dispose of in the manner we prefer. Title to each disposed Unit will transfer to us at no cost to us as necessary for us to dispose of the Unit, and we will retain all proceeds, if any, received from the disposal of any Unit.

F-7.3 You will promptly notify us of any recalls or threatened recalls of any of Your Products and cooperate and assist us in connection with any recalls, including by initiating the procedures for returning items to you under our standard processes. You will be responsible for all costs and expenses you, we or any of our or your Affiliates incur in connection with any recall or threatened recall of any of Your Products (including the costs to return, store, repair, liquidate or deliver to you or any vendor any of these products).

F-8 Customer Service

F-8.1 For Multi-Channel Fulfillment Units we will have no customer service obligations other than to pass any inquiries to your attention at the contact you provide, and to make available a reasonable amount of information regarding the status of the fulfillment of Your Products if you request it and if and to the extent we possess the requested information. You will ensure that all of your policies and messaging to your customers regarding shipping of Your Products and other fulfillment-related matters, reflect our policies and requirements, including with regard to shipping methods, returns and customer service; and, you will conspicuously display on your website(s), in emails or in other media or communications any specific disclosures, messaging, notices, and policies we require.

F-8.2 We will be responsible for and have sole discretion regarding all customer service issues relating to packaging, handling and shipment and customer returns, refunds and adjustments related to Amazon Fulfillment Units. We will have the right to determine whether a customer will receive a refund, adjustment or replacement for any Amazon Fulfillment Unit and to require you to reimburse us where we determine you have responsibility in accordance with the Agreement (including these FBA Service Terms and the Program Policies). Except as provided in this [Section F-8](#) regarding any Amazon Fulfillment Units, customer service will be handled in accordance with your Seller Agreement.

F-8.3 In situations relating to Amazon Fulfillment Units where the wrong item was delivered or the item was damaged or lost or is missing, unless we determine that the basis for such request is caused by you or any of your employees, agents or contractors, we will, as your sole and exclusive remedy and at our option: (a) for any Amazon Fulfillment Unit, (i) ship a replacement Unit to the customer and reimburse you in accordance with the [FBA Guidelines](#) for the replacement Unit, or (ii) process a refund to the customer and reimburse you in accordance with the FBA Guidelines for the Unit; or (b) for any Multi-Channel Fulfillment Unit, reimburse you in accordance with the FBA Guidelines for the Unit (and you will, at our request, provide us a valid tax invoice for the compensation paid to you). Any customer refund will be processed in accordance with the Selling on Amazon and the Transaction Processing Service Terms (if the Elected Country for a Service is the United States). Notwithstanding the Selling on Amazon Service Terms, we will be entitled to retain the applicable fees payable to us under the Selling on Amazon Service Terms and these FBA Service Terms, respectively. Except as expressly provided in this [Section F-8.3](#), you will be responsible for all costs associated with any replacement or return.

F-8.4 If we provide a replacement Unit or refund as described in [Section F-8.3](#) to a customer and that customer returns the original Unit to us, we will be entitled to dispose of the Unit pursuant to [Section E-7](#), or, if it is a Sellable Unit, we may, at our option, place such Unit back into your inventory in accordance with [Section F-6](#). If we do put a Unit back into your inventory, you will reimburse us for the applicable Replacement Value (as described in the FBA Guidelines) of the returned Unit. Any replacement Unit shipped by us under these FBA Service Terms will be deemed to be, and will be treated in the same manner as, an order and sale of such Unit from you to the customer via the

applicable Amazon Site or Service in accordance with, and subject to, the terms and conditions of this Agreement and your Seller Agreement.

F-9 Compensation for Fulfillment Services

F-9.1 Handling and Storage Fees. You will pay us the applicable fees described in the applicable Fulfillment by Amazon [Fee Schedule](#). You will be charged the Storage Fees beginning on the day (up to midnight) that the Unit arrives at a fulfillment center and is available for fulfillment by Amazon (or in the case of any Unsuitable Unit, the arrival day (up to midnight)), until the earlier of: (a) the day (up to midnight) we receive a valid customer order for such product or a request from you to return or dispose of the Unit; or (b) the day (up to midnight) we actually ship the Unit to your designated return location or dispose of the Unit.

F-9.2 Shipping and Gift Wrap. For any Amazon Fulfillment Units we will determine the amounts charged to the customer for shipping and gift wrap services for the Units that we fulfill through the FBA Program. As between you and us, these charges will be your charges to the customer, and we will report them to you. We will charge you (and you will pay us) a fee equal to the amount of such charges to the customer. In the case of shipments of Units sold through the Amazon Site that qualify for the "Free Shipping" promotion, the amounts charged to the customer for shipping the Selling on Amazon Units that Amazon fulfills will first be charged to the customer and will next be deducted from the total charges to the customer as your promotion and Amazon will not charge you the fee described above. If the Elected Country is the United States and you ship Units to us using the shipping rates that we may make available pursuant to [Section F-3.3](#), you will reimburse us for the actual amounts charged to us by the applicable carrier for such shipments.

F-9.3 Proceeds. We may keep all proceeds of any Units that we dispose of or to which title transfers, including returned, damaged or abandoned Units. You will have no security interest, lien or other claim to the proceeds that we receive in connection with the sale, fulfillment and/or shipment of these Units.

F-10 Indemnity

In addition to your obligations under [Section 6](#) of the General Terms of this Agreement, you also agree to indemnify, defend and hold harmless us, our Affiliates, and our and their respective officers, directors, employees, representatives and agents against any Claim that arises from or relates to: (a) the Units (whether or not title has transferred to us, and including any Unit that we identify as yours pursuant to [Section F-4](#) regardless of whether such Unit is the actual item you originally sent to us), including any personal injury, death or property damage; (b) the shipment, export or delivery of Your Products to Foreign Addresses (including with respect to any classification data and other information provided by you to us in connection therewith, and notwithstanding any rights we have under [Section F-5](#) or any certifications we may make in connection with the shipment, export or delivery of Your

Products); (c) any of Your Taxes or the collection, payment or failure to collect or pay Your Taxes; and, if applicable (d) any sales, use, value added, personal property, gross receipts, excise, franchise, business or other taxes or fees, or any customs, duties or similar assessments (including penalties, fines or interest on any of the foregoing) imposed by any government or other taxing authority in connection with the shipment of Foreign-Eligible Products to Foreign Addresses (collectively, **"Foreign Shipment Taxes"**).

F-11 Release

You, on behalf of yourself and any successors, subsidiaries, Affiliates, officers, directors, shareholders, employees, assigns and any other person or entity claiming by, through, under or in concert with them (collectively, the **"Releasing Parties"**), irrevocably acknowledge full and complete satisfaction of and unconditionally and irrevocably release and forever fully discharge Amazon and each of our Affiliates, and any and all of our and their predecessors, successors, and Affiliates, past and present, as well as each of our and their partners, officers, directors, shareholders, agents, employees, representatives, attorneys, and assigns, past and present, and each of them and all Persons acting by, through, under or in concert with any of them (collectively, the **"Released Parties"**), from any and all claims, obligations, demands, causes of action, suits, damages, losses, debts or rights of any kind or nature, whether known or unknown, suspected or unsuspected, absolute or contingent, accrued or unaccrued, determined or speculative (collectively, **"Losses"**) which the Releasing Parties now own or hold or at any time have owned or held or in the future may hold or own against the Released Parties, or any of them, arising out of, resulting from, or in any way related to the shipment, export or delivery of Your Products to Foreign Addresses, including any tax registration or collection obligations. You, on behalf of yourself and all other Releasing Parties, recognize that you, and each of them, may have some Losses, WHETHER IN TORT, PRODUCT LIABILITY, CONTRACT, WARRANTY OR OTHERWISE, against the Released Parties of which you, or any of them, are totally unaware and unsuspecting, or which may arise or accrue after the date you register for or use FBA, which the Releasing Parties are giving up by agreeing to these FBA Service Terms. It is your intention in agreeing to these FBA Service Terms that these FBA Service Terms will deprive the Releasing Parties of each and all such Losses and prevent the Releasing Party from asserting any such Losses against the Released Parties, or any of them. In addition to the foregoing, you acknowledge, on behalf of yourself and all other Releasing Parties that you are familiar with Section 1542 of the Civil Code of the State of California, as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

You, on behalf of yourself and all other Releasing Parties, expressly waive and relinquish any rights that you had or may have under Section 1542 of the Civil Code of the State of California or any similar

provision of the law of any other jurisdiction, to the full extent that you may lawfully waive all such rights pertaining to the subject matter of these FBA Service Terms.

F-12 Disclaimer

IN ADDITION TO THE DISCLAIMER IN SECTION 7 OF THE GENERAL TERMS OF THIS AGREEMENT, WE DISCLAIM ANY DUTIES OF A BAILEE OR WAREHOUSEMAN, AND YOU WAIVE ALL RIGHTS AND REMEDIES OF A BAILOR (WHETHER ARISING UNDER COMMON LAW OR STATUTE OR OTHERWISE), RELATED TO OR ARISING OUT OF ANY POSSESSION, STORAGE OR SHIPMENT OF YOUR PRODUCTS BY US OR OUR AFFILIATES OR ANY OF OUR OR THEIR CONTRACTORS OR AGENTS.

F-13 Effect of Termination

Following any termination of the Agreement or these FBA Service Terms in connection with a particular Elected Country, we will, as directed by you, return to you or dispose of the Units held in that Elected Country as provided in Section F-7. If you fail to direct us to return or dispose of the Units within ninety (90) days after termination, then we may elect to return and/or dispose of the Units in whole or in part, as provided in Section F-7, and you will be deemed to have consented to this. Upon any termination of these FBA Service Terms in connection with a particular Elected Country, all rights and obligations of the parties under these FBA Service Terms in connection with such Elected Country will be extinguished, except that the rights and obligations of the parties under Sections F-1, F-2, F-3, F-4, F-5, F-6, F-7, F-8, F-9, F-11, F-12 and F-13 with respect to Units received or stored by Amazon as of the date of termination will survive the termination.

F-14 Tax Matters

You understand and acknowledge that storing Units at fulfillment centers may create tax nexus for you in any country, state, province, or other localities in which your Units are stored, and you will be solely responsible for any taxes owed as a result of such storage. If any Foreign Shipment Taxes or Your Taxes are assessed against us as a result of performing services for you in connection with the FBA Program or otherwise pursuant to these FBA Service Terms, you will be responsible for such Foreign Shipment Taxes and Your Taxes and you will indemnify and hold Amazon harmless from such Foreign Shipment Taxes and Your Taxes as provided in Section F-10 of these FBA Service Terms.

F-15 Additional Representation

In addition to your representations and warranties in Section 5 of the General Terms of this Agreement, you represent and warrant to us that: (a) you have valid legal title to all Units and all necessary rights to distribute the Units and to perform under these FBA Service Terms; (b) you will deliver all Units to us in new condition (or in such condition otherwise described by you in the applicable Your Product listing) and in a merchantable condition; (c) all Units and their packaging will comply with all applicable marking, labeling and other requirements required by Law; (d) no Unit is or

will be produced or manufactured, in whole or in part, by child labor or by convict or forced labor; (e) you and all of your subcontractors, agents and suppliers involved in producing or delivering Units will strictly adhere to all applicable Laws of the Elected Country, its territories and all other countries where Units are produced or delivered, regarding the operation of their facilities and their business and labor practices, including working conditions, wages, hours and minimum ages of workers; and (f) that all Foreign-Eligible Products (i) can be lawfully exported from Canada, Mexico, Japan, or the United States, as applicable, without any license or other authorization; and (ii) can be lawfully imported into, and comply with all applicable Laws of, any eligible country.

FBA Definitions

"Amazon Fulfillment Units" means Units fulfilled using FBA that are sold through an Amazon Site. For avoidance of doubt, if you have successfully registered for or used both the FBA and Selling on Amazon Services, then the term "Amazon Fulfillment Units" and the defined term "Amazon Fulfilled Products" in the Selling on Amazon Service Terms both refer to the same items.

"FBA Excluded Product" means any Unit that is an Excluded Product, or is otherwise prohibited by the applicable [Program Policies](#).

"Foreign Address" means (a) if the Elected Country is the United States, any mailing address that is not (i) within the fifty states of the United States or Puerto Rico, or (ii) an APO/FPO address; and (b) if the Elected Country is not the United States, any mailing address that is not within the Elected Country.

"Fulfillment Request" means a request that you submit to us (in accordance with the standard methods for submission prescribed by us) to fulfill one or more Multi-Channel Fulfillment Units.

"Multi-Channel Fulfillment Units" has the meaning in [Section F-2](#).

"Sellable Unit" means a Unit that is not an Unsuitable Unit.

"Seller Agreement" means the Selling on Amazon Service Terms, the Merchants@ Program Agreement, the Marketplace Participation Agreement, any successor to any of these agreements, or any other similar agreement (as determined by Amazon) between you and us that permits you to offer products and services via a particular Amazon Site.

"Shipping Information" means with respect to any purchased Unit(s), the following information: the name of the recipient, the shipping address, the quantity of Units to be shipped, and any other shipping-related information we may reasonably request.

"Unit" means a unit of Your Product that you deliver to Amazon in connection with the FBA Program.

"Unsuitable Unit" means a Unit: (a) that is defective, damaged, or lacking required label(s); (b) the labels for which were not properly registered with Amazon before shipment or do not match the product that was registered; (c) that is an FBA Excluded Product or does not comply with the Agreement (including applicable Program Policies); (d) that Amazon determines is unsellable or unfulfillable; or (e) that Amazon determines is otherwise unsuitable.

Amazon Clicks Service Terms

Amazon Clicks, including Amazon Product Ads, Amazon Sponsored Products and Amazon Text Ads (together “**Amazon Clicks**”), is a Service that allows you to advertise Your Products on Amazon Network Properties.

These Amazon Clicks Service Terms are part of the Agreement, and, unless specifically provided otherwise, concern and apply only to your participation in Amazon Clicks. BY REGISTERING FOR OR USING AMAZON CLICKS, YOU (ON BEHALF OF YOURSELF OR THE BUSINESS YOU REPRESENT) AGREE TO BE BOUND BY THE AGREEMENT, INCLUDING THESE AMAZON CLICKS SERVICE TERMS.

C-1 Amazon Clicks

Your Ads may be displayed or made available on Amazon Network Properties as we determine. We do not guarantee that Your Ads will be displayed or made available on any Amazon Network Property, or that Your Ads will appear in any particular position or rank. Notwithstanding any other provision of the Agreement, we may in our sole discretion restrict, modify or otherwise determine the content, appearance, design, functionality and all other aspects of Your Ads, and we may remove any of Your Ads without notice. Except to the extent expressly stated in the Agreement, you are solely responsible for all obligations, risks and other aspects pertaining to the sale of any products referred to in Your Ads, including order processing, order fulfillment, returns, refunds, recalls, misdelivery, theft, customer service, and collection of taxes. In addition, you are solely responsible for all ad content, URLs and any other information you submit to us in connection with Your Ads, and the websites and/or other properties to which Your Ads direct users (other than the Amazon Site).

We may use mechanisms that rate, or allow users to rate, Your Products and/or your performance, and we may make these ratings and feedback publicly available. We may use any means we determine necessary to review and monitor Your Ads to improve our service and ad quality.

C-2 Product Information

You will, in accordance with applicable Program Policies, provide, in the format we require, accurate and complete information for each of Your Ads. You will update this information as necessary to ensure that it is at all times accurate and complete. You will not provide any information for, or otherwise seek to advertise for sale on any Amazon Network Property, any products that are unlawful or are otherwise prohibited by applicable Program Policies.

C-3 Amazon Clicks Requirements

Using the highest industry standards, you will treat users and customers who link to your products via any of Your Ads with courtesy and respect during all stages of the buying process and resolve to our and their satisfaction in a timely and professional manner any related customer service matters we or

they bring to your attention. You will ensure that Your Materials and your advertisement, offer, sale and fulfillment of Your Products comply with all applicable Laws and Program Policies. You will not, directly or indirectly, engage in any fraudulent, impermissible, inappropriate or unlawful activities in connection with your participation in Amazon Clicks, including: (a) sending multiple listings of identical products in the same feed or sending multiple feeds under different accounts; (b) generating fraudulent, repetitive or otherwise invalid clicks, impressions, queries or other interactions, whether through the use of automated applications or otherwise; (c) collecting any user information from any Amazon Network Property or retrieving, extracting, indexing or caching any portion of any Amazon website or services or the websites or services of our Affiliates, whether through the use of automated applications or otherwise; (d) targeting communications of any kind on the basis of the intended recipient being a user of any Amazon Network Property; (e) interfering with the proper working of any Amazon Network Property, Amazon Clicks or our systems; or (f) attempting to bypass any mechanism we use to detect or prevent any of the activities described in this paragraph.

C-4 Payment and Tax Matters

You will pay us the applicable fee per Click. The per Click fee will be determined solely by Amazon based on the amount you bid for each of Your Ads, consistent with any applicable product category minimums and Program Policies. You agree to pay us the applicable fees we calculate for your use of the Amazon Clicks Service in the applicable Local Currency only. In addition to any other means permitted by the Agreement, we may collect the applicable fees: (a) in accordance with the payment ladder described in the Program Policies; and (b) on a recurring monthly basis for any remaining unpaid fees accrued after the last ladder payment charged each month. If we choose to invoice you for amounts due to us under the Agreement, you will pay the invoiced amounts within 30 days of the date of the applicable invoice. We may require payment of interest at the rate of 1.5% per month or the highest legally permissible rate, whichever is lower, on all amounts not paid when due until paid in full. You will reimburse us for all fees incurred in connection with our collection of amounts payable and past due. You waive all claims related to the fees we charge (including fees based on suspected invalid Clicks on or invalid impressions of Your Ads), unless claimed within 60 days after the date charged. You understand third parties may generate impressions or Clicks on Your Ads for improper purposes and you accept this risk. Your sole and exclusive remedy for any suspected invalid impressions or Clicks is to request advertising credits within the timeframe set out above.

C-5 Effect of Termination

Upon any termination of the term of the Agreement or these Amazon Clicks Service Terms, all rights and obligations of the parties under these Amazon Clicks Service Terms will terminate, except that Sections C-1, C-2, C-4, C-5, C-6 and C-7 will survive termination.

C-6 Agents

If you are an Agent: (a) you represent and warrant that you have been appointed as an agent of a Amazon Clicks Participant, that you are duly authorized to enter into this Agreement on behalf of the Amazon Clicks Participant and have full power and authority to bind the Amazon Clicks Participant to this Agreement, and that the Agreement including these Amazon Clicks Service Terms will be enforceable against the Amazon Clicks Participant in accordance with its terms; (b) you will, upon our request, provide us written confirmation of the agency relationship between you and the Amazon Clicks Participant, including, for example, the Amazon Clicks Participant's express acknowledgment that you are its Agent and are authorized to act on its behalf in connection with Amazon Clicks; (c) except as set forth in the Agreement, you will not make any representation, warranty, promise or guarantee about Amazon Clicks, us or your relationship with us; (d) you will perform your duties pursuant to the Agreement including these Amazon Clicks Service Terms in a professional manner consistent with any requirements we may establish; (e) you will not at any time use information received in connection with Amazon Clicks to conduct any marketing efforts targeted at our existing advertisers or Amazon Clicks Participants; and (f) you and the Amazon Clicks Participant are each responsible for all payment obligations under these Amazon Clicks Service Terms, and you and the Amazon Clicks Participant each waive any rights that might require us to proceed against one or more of you prior to proceeding against the other.

C-7 Miscellaneous

C-7.1 Representations

In addition to your representations and warranties in Section 5 of the Agreement, you represent and warrant to us that: (a) on any website to which Your Ads link (other than on the Amazon Site), you will at all times post and comply with a privacy policy that complies with all applicable Laws; and (b) Your Materials and any information displayed on your website or on any website to which Your Ads link (for the Amazon Site, only to the extent such information is based on Your Materials) comply with all applicable Laws (including all marking and labelling requirements) and do not contain any false, misleading, infringing, defamatory, obscene or sexually explicit materials (except to the extent expressly permitted under applicable Program Policies).

C-7.2 Indemnification

In addition to your obligations under Section 6 of the Agreement, you agree to indemnify, defend and hold harmless us, our Affiliates, and our and their respective officers, directors, employees, representatives and agents against any Claim arising from or related to: (a) your participation in Amazon Clicks, including the display of any of Your Ads, any website, Content, data, materials or other items or information to which Your Ads link, and any actual or alleged infringement of any Intellectual

Property Rights by any of the foregoing; and (b) if you are an Agent, any breach or alleged breach of your representations and warranties set forth in these Amazon Clicks Service Terms.

C-7.3 Disclaimers

IN ADDITION TO THE DISCLAIMERS IN SECTION 7 OF THE AGREEMENT, WE AND OUR AFFILIATES DISCLAIM AND YOU WAIVE ALL CLAIMS REGARDING ANY GUARANTEES ABOUT TIMING, POSITIONING, ADJACENCY, PERFORMANCE, QUANTITY OR QUALITY OF (AS APPLICABLE): PLACEMENTS, TARGETING, IMPRESSIONS, CLICKS, CLICK RATES, CONVERSION RATES, AUDIENCE SIZE, DEMOGRAPHICS OR ADVERTISING COSTS.

Amazon Clicks Definitions

"Agent" means an advertising agency or other person or entity who represents an Amazon Clicks Participant.

"Amazon Clicks Participant" means any person or entity enrolled in Amazon Clicks by you if you are the Agent of that person or entity.

"Amazon Network Properties" means: (a) the Amazon Site; (b) any website, device, service, feature or other online point of presence operated by Amazon or any of our Affiliates; and (c) any Amazon Associated Properties.

"Click" means each time a user clicks on any of Your Ads as determined solely by Amazon.

"Your Ads" means any advertisement for Your Product based upon Your Materials that is displayed through Amazon Clicks.

Transaction Processing Service Terms

BY REGISTERING FOR OR USING ANY SERVICE OTHER THAN AMAZON CLICKS FOR WHICH THE ELECTED COUNTRY IS THE UNITED STATES, YOU (ON BEHALF OF YOURSELF OR THE BUSINESS YOU REPRESENT) AGREE TO BE BOUND BY THESE TRANSACTION PROCESSING SERVICE TERMS FOR THAT SERVICE. **NOTWITHSTANDING THE FOREGOING, IF A SEPARATE AGREEMENT GOVERNS THE OFFER, SALE OR FULFILLMENT OF YOUR PRODUCTS ON THE US AMAZON SITE, THE TERMS OF THAT AGREEMENT WILL CONTINUE TO GOVERN THE PROCESSING OF YOUR TRANSACTIONS TO THE EXTENT DESCRIBED IN THAT AGREEMENT.**

P-1 Payments Processing Agency Appointment

You authorize Amazon Payments, Inc. ("**Amazon Payments**") to act as your agent for purposes of processing payments, refunds and adjustments for Your Transactions, receiving and holding Sales Proceeds on your behalf, remitting Sales Proceeds to Your Bank Account, charging your Credit Card, and paying Amazon and its Affiliates amounts you owe in accordance with this Agreement or other agreements you may have with Amazon Affiliates. Amazon Payments provides the services described in these Transaction Processing Service Terms and the related services described in Sections S-1.4, S-2.2, S-6, W-3.2, W-3.3, W-3.4, W-6.3.2, W-6.3.3, W-7.5, and F-8.3 of the Agreement (collectively, the "**Transaction Processing Services**").

When a buyer instructs us to pay you, you agree that the buyer authorizes and orders us to commit the buyer's payment (less any applicable fees or other amounts we may collect under this Agreement) to you. You agree that buyers satisfy their obligations to you for Your Transactions when we receive the Sales Proceeds. We will remit funds to you in accordance with this Agreement.

P-2 Remittance

Amazon Payments will remit funds to you in accordance with Sections S-6 and W-6.3.2 of the Agreement and these Transaction Processing Service Terms. Amazon Payments' obligation to remit funds collected by it on your behalf is limited to funds that have actually been received by Amazon Payments less amounts owed to Amazon, subject to chargeback or reversal or withheld for anticipated claims in accordance with this Agreement. Without limiting Amazon's rights to collect any amounts you owe, including as described in Section 2 of the General Terms of this Agreement, Amazon Payments' receipt of Sales Proceeds discharges your obligation to pay applicable fees and other amounts under this Agreement to the extent the Sales Proceeds equal or exceed the fees and other amounts you owe and the Sales Proceeds are applied to the payment of those fees and amounts.

P-3 Your Funds

Your Sales Proceeds will be held in an account with Amazon Payments (a "**Seller Account**") and will represent an unsecured claim against Amazon Payments. Your Sales Proceeds are not insured by the

Federal Deposit Insurance Corporation. Prior to disbursing funds to you, Amazon Payments may combine Sales Proceeds held with the funds of other users of the Services, invest them, or use them for other purposes permitted by applicable Laws. You will not receive interest or any other earnings on any Sale Proceeds. To the extent required by applicable Laws, Amazon Payments will not use any funds held on your behalf for its corporate purposes, will not voluntarily make such funds available to its creditors in the event of bankruptcy or for any other purpose, and will not knowingly permit its creditors to attach such funds.

P-4 Verification

We may at any time require you to provide any financial, business or personal information we request to verify your identity. You authorize us to obtain from time to time consumer credit reports to establish or update your Seller Account or in the event of a dispute relating to this Agreement or the activity under your Seller Account. You agree to update all Seller Account information promptly upon any change. The [Amazon Payments Privacy Notice](#) applies to your use of the Transaction Processing Services.

P-5 Dormant Accounts

If there is no activity (as determined by us) in connection with your Seller Account for the period of time set forth in applicable unclaimed property laws and we hold Sales Proceeds on your behalf, we will notify you by means designated by us and provide you the option of keeping your Seller Account open and maintaining the Sales Proceeds in your Seller Account. If you do not respond to our notice(s) within the time period we specify, we will send the Sales Proceeds in your Seller Account to your state of residency, as determined by us based on the information in your Seller Account. If we are unable to determine your state of residency or your Seller Account is associated with a foreign country, your funds may be sent to the State of Delaware.

EXHIBIT 7

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[All Help Topics](#)

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Last updated: June 21, 2016

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Increase Your Chances of Winning the Buy Box

Since seller performance metric targets can vary by category and are subject to change, we do not disclose specific targets for becoming Buy Box eligible. Buy Box eligibility requires meeting very high standards. Excelling in all areas that deliver an outstanding customer experience is the best way to achieve Buy Box eligibility and win the Buy Box, including:

Pricing

- Price competitively. Customers trust that they will find low prices on Amazon.com.
- Watch your competition to stay competitive. View the price of the offer that is currently winning the Buy Box. On the Manage Inventory page, click the **Preferences** button, and select **Show when available** for the current Buy Box winning price. Buy Box winning prices are displayed for "New" condition listings only.

Availability

- Keep stock available. If you have no current stock for a product, you cannot win the Buy Box. Use inventory planning best practices to keep your popular products in stock.
- Update your inventory. Customers who submit orders for products that are not in stock are likely to leave negative feedback, especially around the holidays. To ensure that buyers cannot place orders for out-of-stock items, keep your inventory updated.
- Plan vacations. If you are going on vacation, make sure that customers are not left waiting for orders to arrive. See **Listings Status** for more information.

Fulfillment

- Offer multiple shipping options on your products, including free shipping. You can manage your available shipping options in **Shipping Settings**.

Customer service

- Customer service is measured in numerous ways. Excelling in all areas can help you succeed on Amazon. The **Account Health** page on the Performance link can help you track your customer metrics.

See also

- [Listing Status Settings for Vacations, Holidays, and Other Absences](#)
- [Current Shipping Rates and Settings](#)
- [Account Health](#)
- [Seller Performance Measurement](#)

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EXHIBIT 9

1 2 3	2016 Shipments Delivered to South Carolina	Q1 2016						
		MFN			FBA			Total Activity
		No Sales Tax	Sales Tax	Total	No Sales Tax	Sales Tax	Total	
4	Shipment Count	1,587,485	49,472	1,636,957	2,355,643	156,653	2,512,296	4,149,253
5	Principle Sales	53,203,139	1,951,331	55,154,470	76,398,441	5,693,222	82,091,663	137,246,132
6	Shipping Charge	7,152,210	200,935	7,353,145	2,532,083	149,463	2,681,547	10,034,692
7	Gift Wrap	766	21	788	27,646	1,609	29,255	30,042
8	Sales Tax	-	140,254	140,254	-	407,542	407,542	547,796
9	Total Sales	61,943,600	2,342,013	64,285,614	81,313,813	6,408,489	87,722,302	152,007,916
10	Principle Refunds	(3,377,426)	(121,207)	(3,498,633)	(6,898,444)	(853,576)	(7,752,020)	(11,250,653)
11	Refund Shipping Charge	(126,043)	(4,341)	(130,384)	(109,921)	(4,848)	(114,769)	(245,153)
12	Refund Gift Wrap	(11)	-	(11)	(1,441)	(77)	(1,518)	(1,529)
13	Refund Sales Tax	-	(8,989)	(8,989)	-	(62,174)	(62,174)	(71,163)
14	Total Refunds	(3,503,481)	(134,537)	(3,638,017)	(7,009,807)	(920,674)	(7,930,481)	(11,568,498)
15	Net Principle	49,825,712	1,830,124	51,655,836	69,499,996	4,839,647	74,339,643	125,995,479
16	Net Shipping Charge	7,026,167	196,594	7,222,761	2,422,162	144,615	2,566,777	9,789,539
17	Net Gift Wrap	755	21	776	26,205	1,532	27,737	28,513
18	Net Sales Tax	-	131,265	131,265	-	345,368	345,368	476,633
19	Net Activity	58,440,120	2,207,477	60,647,596	74,304,007	5,487,814	79,791,821	140,439,417

Assumptions

Sales and Shipping Charges are net of Promotions

EXHIBIT 10

10-Q 1 amzn-20160930x10q.htm 10-Q

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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-Q

(Mark One)

☒ **QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the quarterly period ended September 30, 2016
or

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the transition period from to .
Commission File No. 000-22513

AMAZON.COM, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

91-1646860
(I.R.S. Employer
Identification No.)

410 Terry Avenue North, Seattle, Washington 98109-5210
(206) 266-1000

(Address and telephone number, including area code, of registrant's principal executive offices)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes ☒ No ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See definitions of "large accelerated filer," "accelerated filer," and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer ☒ Accelerated filer ☐

Non-accelerated filer ☐ (Do not check if a smaller reporting company) Smaller reporting company ☐

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes ☐ No ☒

475,166,527 shares of common stock, par value \$0.01 per share, outstanding as of October 19, 2016

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AMAZON.COM, INC.
FORM 10-Q
For the Quarterly Period Ended September 30, 2016
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AMAZON.COM, INC.
CONSOLIDATED STATEMENTS OF CASH FLOWS
(in millions)
(unaudited)

	Three Months Ended September 30,		Nine Months Ended September 30,		Twelve Months Ended September 30,	
	2016	2015	2016	2015	2016	2015
CASH AND CASH EQUIVALENTS, BEGINNING OF PERIOD	\$ 12,521	\$ 10,269	\$ 15,890	\$ 14,557	\$ 10,709	\$ 5,258
OPERATING ACTIVITIES:						
Net income	252	79	1,622	114	2,105	328
Adjustments to reconcile net income to net cash from operating activities:						
Depreciation of property and equipment, including internal-use software and website development, and other amortization, including capitalized content costs	2,084	1,599	5,819	4,529	7,572	5,908
Stock-based compensation	776	544	2,088	1,513	2,694	1,921
Other operating expense, net	31	34	128	120	163	156
Other expense (income), net	(23)	58	(41)	170	39	248
Deferred income taxes	(81)	(63)	36	(108)	226	76
Excess tax benefits from stock-based compensation	(173)	(95)	(493)	(212)	(401)	(96)
Changes in operating assets and liabilities:						
Inventories	(1,095)	(1,537)	(383)	(844)	(1,726)	(1,983)
Accounts receivable, net and other	(671)	(588)	(1,443)	(577)	(2,621)	(1,681)
Accounts payable	2,540	2,030	(2,252)	(1,846)	3,887	3,207
Accrued expenses and other	441	143	(531)	(925)	1,306	525
Additions to unearned revenue	2,802	1,779	7,956	4,979	10,377	6,358
Amortization of previously unearned revenue	(2,397)	(1,373)	(6,715)	(3,805)	(9,018)	(5,144)
Net cash provided by (used in) operating activities	4,486	2,610	5,791	3,108	14,603	9,823
INVESTING ACTIVITIES:						
Purchases of property and equipment, including internal-use software and website development, net	(1,841)	(1,195)	(4,731)	(3,280)	(6,040)	(4,424)
Acquisitions, net of cash acquired, and other	(84)	(105)	(113)	(478)	(430)	(531)
Sales and maturities of marketable securities	1,431	1,045	3,500	1,890	4,635	2,244
Purchases of marketable securities	(2,076)	(1,122)	(4,358)	(2,732)	(5,717)	(4,354)
Net cash provided by (used in) investing activities	(2,570)	(1,377)	(5,702)	(4,600)	(7,552)	(7,065)
FINANCING ACTIVITIES:						
Excess tax benefits from stock-based compensation	173	95	493	212	401	96
Proceeds from long-term debt and other	8	33	83	260	176	6,241
Repayments of long-term debt and other	(26)	(181)	(271)	(712)	(1,212)	(894)
Principal repayments of capital lease obligations	(938)	(656)	(2,855)	(1,738)	(3,579)	(2,144)
Principal repayments of finance lease obligations	(44)	(21)	(105)	(95)	(131)	(163)
Net cash provided by (used in) financing activities	(827)	(730)	(2,655)	(2,073)	(4,345)	3,136
Foreign currency effect on cash and cash equivalents	46	(63)	332	(283)	241	(443)
Net increase (decrease) in cash and cash equivalents	1,135	440	(2,234)	(3,848)	2,947	5,451
CASH AND CASH EQUIVALENTS, END OF PERIOD	\$ 13,656	\$ 10,709	\$ 13,656	\$ 10,709	\$ 13,656	\$ 10,709
SUPPLEMENTAL CASH FLOW INFORMATION:						
Cash paid for interest on long-term debt	\$ 1	\$ 7	\$ 146	\$ 177	\$ 295	\$ 212
Cash paid for interest on capital and finance lease obligations	50	41	145	109	188	138

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Cash paid for income taxes, net of refunds	91	80	317	200	390	230
Property and equipment acquired under capital leases	1,369	1,047	3,666	3,385	4,998	4,599
Property and equipment acquired under build-to-suit leases	211	125	793	381	956	595

See accompanying notes to consolidated financial statements.

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AMAZON.COM, INC.
CONSOLIDATED STATEMENTS OF OPERATIONS
(in millions, except per share data)
(unaudited)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2016	2015	2016	2015
Net product sales	\$ 22,339	\$ 18,463	\$ 64,036	\$ 52,650
Net service sales	10,375	6,895	28,210	18,609
Total net sales	32,714	25,358	92,246	71,259
Operating expenses:				
Cost of sales	21,260	16,755	59,306	47,310
Fulfillment	4,335	3,230	11,900	8,865
Marketing	1,738	1,264	4,720	3,496
Technology and content	4,135	3,197	11,541	8,971
General and administrative	639	463	1,715	1,357
Other operating expense, net	32	43	133	136
Total operating expenses	32,139	24,952	89,315	70,135
Operating income	575	406	2,931	1,124
Interest income	26	13	71	37
Interest expense	(118)	(116)	(351)	(344)
Other income (expense), net	8	(56)	75	(187)
Total non-operating income (expense)	(84)	(159)	(205)	(494)
Income before income taxes	491	247	2,726	630
Provision for income taxes	(229)	(161)	(1,012)	(498)
Equity-method investment activity, net of tax	(10)	(7)	(92)	(18)
Net income	\$ 252	\$ 79	\$ 1,622	\$ 114
Basic earnings per share	\$ 0.53	\$ 0.17	\$ 3.43	\$ 0.24
Diluted earnings per share	\$ 0.52	\$ 0.17	\$ 3.36	\$ 0.24
Weighted-average shares used in computation of earnings per share:				
Basic	474	468	473	467
Diluted	485	478	483	476

See accompanying notes to consolidated financial statements.

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AMAZON.COM, INC.
CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME (LOSS)
(in millions)
(unaudited)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2016	2015	2016	2015
Net income	\$ 252	\$ 79	\$ 1,622	\$ 114
Other comprehensive income (loss):				
Foreign currency translation adjustments, net of tax of \$6, \$4, \$18, and \$3	19	(56)	133	(170)
Net change in unrealized gains (losses) on available-for-sale securities:				
Unrealized gains (losses), net of tax of \$(15), \$3, \$(32), and \$(5)	29	(3)	65	3
Reclassification adjustment for losses (gains) included in "Other income (expense), net," net of tax of \$(1), \$(1), \$(2), and \$(1)	2	1	4	3
Net unrealized gains (losses) on available-for-sale securities	31	(2)	69	6
Total other comprehensive income (loss)	50	(58)	202	(164)
Comprehensive income (loss)	\$ 302	\$ 21	\$ 1,824	\$ (50)

See accompanying notes to consolidated financial statements.

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AMAZON.COM, INC.
CONSOLIDATED BALANCE SHEETS
(in millions, except per share data)

	<u>September 30, 2016</u>	<u>December 31, 2015</u>
	<u>(unaudited)</u>	
<u>ASSETS</u>		
Current assets:		
Cash and cash equivalents	\$ 13,656	\$ 15,890
Marketable securities	4,691	3,918
Inventories	10,696	10,243
Accounts receivable, net and other	6,566	5,654
Total current assets	<u>35,609</u>	<u>35,705</u>
Property and equipment, net	27,177	21,838
Goodwill	3,815	3,759
Other assets	4,296	3,445
Total assets	<u>\$ 70,897</u>	<u>\$ 64,747</u>
<u>LIABILITIES AND STOCKHOLDERS' EQUITY</u>		
Current liabilities:		
Accounts payable	\$ 18,801	\$ 20,397
Accrued expenses and other	10,497	10,372
Unearned revenue	4,200	3,118
Total current liabilities	<u>33,498</u>	<u>33,887</u>
Long-term debt	8,205	8,227
Other long-term liabilities	11,412	9,249
Commitments and contingencies (Note 3)		
Stockholders' equity:		
Preferred stock, \$0.01 par value:		
Authorized shares — 500		
Issued and outstanding shares — none	—	—
Common stock, \$0.01 par value:		
Authorized shares — 5,000		
Issued shares — 498 and 494		
Outstanding shares — 475 and 471	5	5
Treasury stock, at cost	(1,837)	(1,837)
Additional paid-in capital	15,968	13,394
Accumulated other comprehensive loss	(521)	(723)
Retained earnings	4,167	2,545
Total stockholders' equity	<u>17,782</u>	<u>13,384</u>
Total liabilities and stockholders' equity	<u>\$ 70,897</u>	<u>\$ 64,747</u>

See accompanying notes to consolidated financial statements.

AMAZON.COM, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
(unaudited)

Note 1 — ACCOUNTING POLICIES

Unaudited Interim Financial Information

We have prepared the accompanying consolidated financial statements pursuant to the rules and regulations of the Securities and Exchange Commission (the “SEC”) for interim financial reporting. These consolidated financial statements are unaudited and, in our opinion, include all adjustments, consisting of normal recurring adjustments and accruals necessary for a fair presentation of our consolidated balance sheets, operating results, and cash flows for the periods presented. Operating results for the periods presented are not necessarily indicative of the results that may be expected for 2016 due to seasonal and other factors. Certain information and footnote disclosures normally included in financial statements prepared in accordance with accounting principles generally accepted in the United States (“GAAP”) have been omitted in accordance with the rules and regulations of the SEC. These consolidated financial statements should be read in conjunction with the audited consolidated financial statements and accompanying notes in Item 8 of Part II, “Financial Statements and Supplementary Data,” of our 2015 Annual Report on Form 10-K.

Prior Period Reclassifications

Certain prior period amounts have been reclassified to conform to the current period presentation, including the allocation of stock-based compensation and “Other operating expense, net” to segment results within “Note 7 — Segment Information.” These revised segment results reflect the way the Company evaluates its business performance and manages its operations. In Q1 2016, current deferred tax assets and current deferred tax liabilities were reclassified as non-current. See “Recent Accounting Pronouncements” below. We also reclassified our capitalized debt issuance costs from “Other assets” to “Long-term debt” as a result of the adoption of new accounting guidance. The adoption of this guidance did not have a material impact on our consolidated financial statements.

Principles of Consolidation

The consolidated financial statements include the accounts of Amazon.com, Inc., its wholly-owned subsidiaries, and those entities in which we have a variable interest and of which we are the primary beneficiary, including certain entities in India and China (collectively, the “Company”). Intercompany balances and transactions between consolidated entities are eliminated.

Use of Estimates

The preparation of financial statements in conformity with GAAP requires estimates and assumptions that affect the reported amounts of assets and liabilities, revenues and expenses, and related disclosures of contingent liabilities in the consolidated financial statements and accompanying notes. Estimates are used for, but not limited to, determining the selling price of products and services in multiple element revenue arrangements and determining the amortization period of these elements, incentive discount offers, sales returns, vendor funding, stock-based compensation forfeiture rates, income taxes, valuation and impairment of investments, inventory valuation and inventory purchase commitments, collectability of receivables, valuation of acquired intangibles and goodwill, depreciable lives of property and equipment, internal-use software and website development costs, acquisition purchase price allocations, investments in equity interests, and contingencies. Actual results could differ materially from those estimates.

Earnings per Share

Basic earnings per share is calculated using our weighted-average outstanding common shares. Diluted earnings per share is calculated using our weighted-average outstanding common shares including the dilutive effect of stock awards as determined under the treasury stock method. In periods when we have a net loss, stock awards are excluded from our calculation of earnings per share as their inclusion would have an antidilutive effect.

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The following table shows the calculation of diluted shares (in millions):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2016	2015	2016	2015
Shares used in computation of basic earnings per share	474	468	473	467
Total dilutive effect of outstanding stock awards	11	10	10	9
Shares used in computation of diluted earnings per share	485	478	483	476

Recent Accounting Pronouncements

In May 2014, the Financial Accounting Standards Board (“FASB”) issued an Accounting Standards Update (“ASU”) amending revenue recognition guidance and requiring more detailed disclosures to enable users of financial statements to understand the nature, amount, timing, and uncertainty of revenue and cash flows arising from contracts with customers. In August 2015, the FASB deferred the effective date of the revenue recognition guidance to reporting periods beginning after December 15, 2017. Early adoption is permitted for reporting periods beginning after December 15, 2016. We are continuing to evaluate our method of adoption and the impact this ASU, and related amendments and interpretations, will have on our consolidated financial statements.

In November 2015, the FASB issued an ASU amending the accounting for income taxes and requiring all deferred tax assets and liabilities to be classified as non-current on the consolidated balance sheets. The ASU is effective for reporting periods beginning after December 15, 2016, with early adoption permitted. The ASU may be adopted either prospectively or retrospectively. We adopted this ASU in Q1 2016 and retrospectively adjusted prior periods. Upon adoption, current deferred tax assets of \$769 million and current deferred tax liabilities of \$13 million in our December 31, 2015 consolidated balance sheet were reclassified as non-current.

In February 2016, the FASB issued an ASU amending the accounting for leases. The new guidance requires the recognition of lease assets and liabilities for operating leases with terms of more than 12 months, in addition to those currently recorded, on our consolidated balance sheets. Presentation of leases within the consolidated statements of operations and consolidated statements of cash flows will be generally consistent with the current lease accounting guidance. The ASU is effective for reporting periods beginning after December 15, 2018, with early adoption permitted. We are currently evaluating the impact, and expect the ASU will have a material impact on our consolidated financial statements, primarily to the consolidated balance sheets and related disclosures.

In March 2016, the FASB issued an ASU amending the accounting for stock-based compensation and requiring excess tax benefits and deficiencies to be recognized as a component of income tax expense rather than equity. This guidance also requires excess tax benefits to be presented as an operating activity on the statement of cash flows and allows an entity to make an accounting policy election to either estimate expected forfeitures or to account for them as they occur. The ASU is effective for reporting periods beginning after December 15, 2016, with early adoption permitted. We are currently evaluating the impact, and expect the ASU will have a material impact on our consolidated financial statements.

In October 2016, the FASB issued an ASU amending the accounting for income taxes. The new guidance requires the recognition of the income tax consequences of an intercompany asset transfer, other than transfers of inventory, when the transfer occurs. For intercompany transfers of inventory, the income tax effects will continue to be deferred until the inventory has been sold to a third party. The ASU is effective for reporting periods beginning after December 15, 2017, with early adoption permitted. We are currently evaluating the impact, and expect the ASU will have a material impact on our consolidated financial statements.

Note 2 — CASH, CASH EQUIVALENTS, AND MARKETABLE SECURITIES

As of September 30, 2016, and December 31, 2015, our cash, cash equivalents, and marketable securities primarily consisted of cash, U.S. and foreign government and agency securities, AAA-rated money market funds, and other investment grade securities. Cash equivalents and marketable securities are recorded at fair value. Fair value is defined as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. To increase the comparability of fair value measures, the following hierarchy prioritizes the inputs to valuation methodologies used to measure fair value:

Level 1—Valuations based on quoted prices for identical assets and liabilities in active markets.

Level 2—Valuations based on observable inputs other than quoted prices included in Level 1, such as quoted prices for similar assets and liabilities in active markets, quoted prices for identical or similar assets and liabilities in markets that are not active, or other inputs that are observable or can be corroborated by observable market data.

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Level 3—Valuations based on unobservable inputs reflecting our own assumptions, consistent with reasonably available assumptions made by other market participants. These valuations require significant judgment.

We measure the fair value of money market funds and equity securities based on quoted prices in active markets for identical assets or liabilities. All other financial instruments were valued either based on recent trades of securities in inactive markets or based on quoted market prices of similar instruments and other significant inputs derived from or corroborated by observable market data. We did not hold any cash, cash equivalents, or marketable securities categorized as Level 3 assets as of September 30, 2016, or December 31, 2015.

The following tables summarize, by major security type, our cash, cash equivalents, and marketable securities that are measured at fair value on a recurring basis and are categorized using the fair value hierarchy (in millions):

	September 30, 2016			December 31, 2015	
	Cost or Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Total Estimated Fair Value	Total Estimated Fair Value
Cash	\$ 5,730	\$ —	\$ —	\$ 5,730	\$ 6,201
Level 1 securities:					
Money market funds	8,386	—	—	8,386	8,025
Equity securities	23	106	—	129	15
Level 2 securities:					
Foreign government and agency securities	45	1	—	46	49
U.S. government and agency securities	3,695	3	(4)	3,694	5,167
Corporate debt securities	587	2	—	589	477
Asset-backed securities	152	—	(1)	151	117
Other fixed income securities	90	—	—	90	42
	<u>\$ 18,708</u>	<u>\$ 112</u>	<u>\$ (5)</u>	<u>\$ 18,815</u>	<u>\$ 20,093</u>
Less: Restricted cash, cash equivalents, and marketable securities (1)				(468)	(285)
Total cash, cash equivalents, and marketable securities				<u>\$ 18,347</u>	<u>\$ 19,808</u>

(1) We are required to pledge or otherwise restrict a portion of our cash, cash equivalents, and marketable securities as collateral for standby and trade letters of credit, guarantees, debt, real estate leases, and amounts due to third-party sellers in certain jurisdictions. We classify cash, cash equivalents, and marketable securities with use restrictions of less than twelve months as “Accounts receivable, net and other” and of twelve months or longer as non-current “Other assets” on our consolidated balance sheets. See “Note 3 — Commitments and Contingencies.”

The following table summarizes the contractual maturities of our cash equivalents and marketable fixed-income securities as of September 30, 2016 (in millions):

	Amortized Cost	Estimated Fair Value
Due within one year	\$ 10,647	\$ 10,648
Due after one year through five years	1,933	1,934
Due after five years through ten years	193	193
Due after ten years	182	181
Total	<u>\$ 12,955</u>	<u>\$ 12,956</u>

Actual maturities may differ from the contractual maturities because borrowers may have certain prepayment conditions.

We also hold equity warrant assets giving us the right to acquire stock of other companies. As of September 30, 2016, and December 31, 2015, these warrants had a fair value of \$142 million and \$16 million, and are recorded within “Other assets” on our consolidated balance sheets. The related gain (loss) recorded in “Other income (expense), net” was \$9 million and \$(1) million in Q3 2016 and Q3 2015, and \$(11) million and \$1 million in the nine months ended September 30, 2016 and 2015. These assets are primarily classified as Level 2 assets.

[Table of Contents](#)**Note 3 — COMMITMENTS AND CONTINGENCIES*****Commitments***

We have entered into non-cancellable operating, capital, and finance leases for equipment and office, fulfillment, sortation, delivery, data center, and renewable energy facilities. Rental expense under operating lease agreements was \$367 million and \$291 million for Q3 2016 and Q3 2015, and \$1.0 billion and \$824 million for the nine months ended September 30, 2016 and 2015.

The following summarizes our principal contractual commitments, excluding open orders for purchases that support normal operations, as of September 30, 2016 (in millions):

	Three Months Ended December 31,	Year Ended December 31,					Total
	2016	2017	2018	2019	2020	Thereafter	
Debt principal and interest	\$ 164	\$ 1,324	\$ 311	\$ 1,273	\$ 246	\$ 9,157	\$ 12,475
Capital lease obligations, including interest (1)	739	3,693	2,434	1,046	326	240	8,478
Finance lease obligations, including interest (2)	56	228	233	237	241	2,203	3,198
Operating leases	347	1,259	1,159	1,028	961	4,284	9,038
Unconditional purchase obligations (3)	162	690	555	297	140	56	1,900
Other commitments (4) (5)	595	682	527	426	326	2,216	4,772
Total commitments	<u>\$ 2,063</u>	<u>\$ 7,876</u>	<u>\$ 5,219</u>	<u>\$ 4,307</u>	<u>\$ 2,240</u>	<u>\$ 18,156</u>	<u>\$ 39,861</u>

- (1) Excluding interest, current capital lease obligations of \$3.7 billion and \$3.0 billion are recorded within “Accrued expenses and other” as of September 30, 2016, and December 31, 2015, and \$4.5 billion and \$4.2 billion are recorded within “Other long-term liabilities” as of September 30, 2016, and December 31, 2015.
- (2) Excluding interest, current finance lease obligations of \$135 million and \$99 million are recorded within “Accrued expenses and other” as of September 30, 2016, and December 31, 2015, and \$2.4 billion and \$1.7 billion are recorded within “Other long-term liabilities” as of September 30, 2016, and December 31, 2015.
- (3) Includes unconditional purchase obligations related to long-term agreements to acquire and license digital media content that are not reflected on the consolidated balance sheets. For those agreements with variable terms, we do not estimate the total obligation beyond any minimum quantities and/or pricing as of the reporting date. Purchase obligations associated with renewal provisions solely at the option of the content provider are included to the extent such commitments are fixed or a minimum amount is specified.
- (4) Includes the estimated timing and amounts of payments for rent and tenant improvements associated with build-to-suit lease arrangements and equipment lease arrangements that have not been placed in service and digital media content liabilities associated with long-term digital media content assets with initial terms greater than one year.
- (5) Excludes \$1.7 billion of accrued tax contingencies for which we cannot make a reasonably reliable estimate of the amount and period of payment, if any.

Pledged Assets

As of September 30, 2016, and December 31, 2015, we have pledged or otherwise restricted \$588 million and \$418 million of our cash, cash equivalents, and marketable securities, and certain property and equipment as collateral for standby and trade letters of credit, guarantees, debt relating to certain international operations, real estate leases, and amounts due to third-party sellers in certain jurisdictions.

Other Contingencies

As previously disclosed, we recently determined that we processed and delivered orders of consumer products for certain individuals and entities located outside Iran covered by the Iran Threat Reduction and Syria Human Rights Act or other United States sanctions and export control laws. The consumer products included books, music, other media, apparel, home and kitchen, health and beauty, jewelry, office, consumer electronics, software, lawn and patio, grocery, and automotive products. Our review is ongoing and we have voluntarily reported these orders to the United States Treasury Department’s Office of Foreign Assets Control and the United States Department of Commerce’s Bureau of Industry and Security. We intend to cooperate fully with OFAC and BIS with respect to their review, which may result in the imposition of penalties. For additional information, see Item 5 of Part II, “Other Information — Disclosure Pursuant to Section 13(r) of the Exchange Act.”

[Table of Contents](#)***Legal Proceedings***

The Company is involved from time to time in claims, proceedings, and litigation, including the matters described in Item 8 of Part II, “Financial Statements and Supplementary Data — Note 7 — Commitments and Contingencies — Legal Proceedings” of our 2015 Annual Report on Form 10-K and in Item 1 of Part I, “Financial Statements — Note 3 — Commitments and Contingencies — Legal Proceedings” of our Quarterly Reports on Form 10-Q for the Periods Ended March 31, 2016, and June 30, 2016, as supplemented by the following:

In September 2016, Broadcom Corporation and Avago Technologies General IP (Singapore) PTE Ltd. filed a complaint against Amazon.com, Inc. and Amazon Web Services, Inc. in the United States District Court for the Central District of California. The complaint alleges, among other things, that certain Fire devices infringe U.S. Patent Nos. 5,870,087, entitled “MPEG Decoder System and Method Having a Unified Memory for Transport Decode and System Controller Function,” 6,982,663, entitled “Method and System for Symbol Binarization,” 7,006,636, entitled “Coherence-Based Audio Coding and Synthesis,” 7,583,805, entitled “Late Reverberation-Based Synthesis of Auditory Scenes,” and 8,284,844, entitled “Video Decoding System Supporting Multiple Standards.” The complaint also alleges that certain Kindle and Fire devices, and the Dash Button and Amazon Echo, infringe U.S. Patent No. 6,430,148, entitled “Multidirectional Communication Systems,” and that certain Fire devices and the Amazon Echo infringe U.S. Patent No. 6,766,389, entitled “System on a Chip for Networking.” The complaint also alleges that Amazon Web Services’ Elastic Transcoder and CloudFront infringe U.S. Patent No. 7,296,295, entitled “Media Processing System Supporting Different Media Formats Via Server-Based Transcoding,” that Amazon Elastic Transcoder infringes U.S. Patent No. 6,744,387, entitled “Method and System for Symbol Binarization,” that CloudFront infringes U.S. Patent No. 6,341,375, entitled “Video on Demand DVD System,” and that Elastic Compute Cloud infringes U.S. Patent No. 6,501,480, entitled “Graphics Accelerator.” The complaint seeks injunctive relief, an unspecified amount of damages, enhanced damages, attorneys’ fees, and costs. We dispute the allegations of wrongdoing and intend to defend ourselves vigorously in this matter.

The outcomes of our legal proceedings and other contingencies are inherently unpredictable, subject to significant uncertainties, and could be material to our operating results and cash flows for a particular period. In addition, for some matters for which a loss is probable or reasonably possible, an estimate of the amount of loss or range of losses is not possible and we may be unable to estimate the possible loss or range of losses that could potentially result from the application of non-monetary remedies.

See also “Note 6 — Income Taxes.”

[Table of Contents](#)**Note 4 — LONG-TERM DEBT**

In December 2014, and November 2012, we issued \$6.0 billion and \$3.0 billion of unsecured senior notes, of which \$8.3 billion is outstanding, as described in the table below (collectively, the “Notes”). As of September 30, 2016, and December 31, 2015, the unamortized discount on the Notes was \$92 million and \$97 million. We also have other long-term debt with a carrying amount, including the current portion, of \$95 million and \$312 million as of September 30, 2016, and December 31, 2015. The face value of our total long-term debt obligations is as follows (in millions):

	September 30, 2016	December 31, 2015
1.20% Notes due on November 29, 2017 (1)	\$ 1,000	\$ 1,000
2.60% Notes due on December 5, 2019 (2)	1,000	1,000
3.30% Notes due on December 5, 2021 (2)	1,000	1,000
2.50% Notes due on November 29, 2022 (1)	1,250	1,250
3.80% Notes due on December 5, 2024 (2)	1,250	1,250
4.80% Notes due on December 5, 2034 (2)	1,250	1,250
4.95% Notes due on December 5, 2044 (2)	1,500	1,500
Other long-term debt	95	312
Total debt	8,345	8,562
Less current portion of long-term debt	(48)	(238)
Face value of long-term debt	<u>\$ 8,297</u>	<u>\$ 8,324</u>

(1) Issued in November 2012, effective interest rates of the 2017 and 2022 Notes were 1.38% and 2.66%.

(2) Issued in December 2014, effective interest rates of the 2019, 2021, 2024, 2034, and 2044 Notes were 2.73%, 3.43%, 3.90%, 4.92%, and 5.11%.

Interest on the Notes issued in 2014 is payable semi-annually in arrears in June and December. Interest on the Notes issued in 2012 is payable semi-annually in arrears in May and November. We may redeem the Notes at any time in whole, or from time to time, in part at specified redemption prices. We are not subject to any financial covenants under the Notes. The proceeds from the Notes are used for general corporate purposes. The estimated fair value of the Notes was approximately \$9.1 billion and \$8.5 billion as of September 30, 2016, and December 31, 2015, which is based on quoted prices for our publicly-traded debt as of those dates.

The other debt, including the current portion, had a weighted-average interest rate of 3.03% and 3.74% as of September 30, 2016, and December 31, 2015. We used the net proceeds from the issuance of this debt primarily to fund certain international operations. The estimated fair value of the other long-term debt, which is based on Level 2 inputs, approximated its carrying value as of September 30, 2016, and December 31, 2015.

On May 20, 2016, we entered into an unsecured revolving credit facility (the “Credit Agreement”) with a syndicate of lenders that provides us with a borrowing capacity of up to \$3.0 billion. This Credit Agreement replaces the prior credit agreement entered into on September 5, 2014. The Credit Agreement has a term of three years, but it may be extended for up to three additional one-year terms if approved by the lenders. The initial interest rate applicable to outstanding balances under the Credit Agreement is the London interbank offered rate (“LIBOR”) plus 0.60%, with a commitment fee of 0.05% on the undrawn portion of the credit facility, under our current credit ratings. If our credit ratings are downgraded these rates could increase to as much as LIBOR plus 1.00% and 0.09%, respectively. There were no borrowings outstanding under the credit agreements as of September 30, 2016, and December 31, 2015. On October 13, 2016, we entered into a \$500 million secured revolving credit facility (“Credit Facility”) with a lender that is secured by certain seller receivables. The Credit Facility is available for a term of three years, bears interest at LIBOR plus 1.65%, and has a commitment fee of 0.50% on the undrawn portion.

Note 5 — STOCKHOLDERS’ EQUITY***Stock Repurchase Activity***

In February 2016, the Board of Directors authorized a program to repurchase up to \$5.0 billion of our common stock, with no fixed expiration. This stock repurchase authorization replaces the previous \$2.0 billion stock repurchase authorization, approved by the Board of Directors in 2010. There were no repurchases of common stock in Q3 2016 or Q3 2015.

[Table of Contents](#)**Stock Award Activity**

Common shares outstanding plus shares underlying outstanding stock awards totaled 496 million as of September 30, 2016, and 490 million as of December 31, 2015. These totals include all vested and unvested stock awards outstanding, including those awards we estimate will be forfeited. Stock-based compensation expense is as follows (in millions):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2016	2015	2016	2015
Cost of sales (1)	\$ 7	\$ —	\$ 7	\$ —
Fulfillment	165	122	467	344
Marketing	85	48	221	133
Technology and content	434	309	1,171	861
General and administrative	85	65	222	175
Total stock-based compensation expense	\$ 776	\$ 544	\$ 2,088	\$ 1,513

(1) Beginning in Q3 2016, stock-based compensation expense was recorded to cost of sales for eligible employees providing delivery services.

The compensation expense for stock options, the total intrinsic value for stock options outstanding, the amount of cash received from the exercise of stock options, and the related tax benefits were not material for the nine months ended September 30, 2016.

The following table summarizes our restricted stock unit activity for the nine months ended September 30, 2016 (in millions):

	Number of Units	Weighted-Average Grant-Date Fair Value
Outstanding as of December 31, 2015	18.9	\$ 362
Units granted	7.9	640
Units vested	(4.2)	309
Units forfeited	(1.8)	420
Outstanding as of September 30, 2016	20.8	\$ 473

Scheduled vesting for outstanding restricted stock units as of September 30, 2016, is as follows (in millions):

	Three Months Ended December 31,	Year Ended December 31,					Total
	2016	2017	2018	2019	2020	Thereafter	
Scheduled vesting—restricted stock units	2.0	7.0	7.0	3.1	1.2	0.5	20.8

As of September 30, 2016, there was \$4.6 billion of net unrecognized compensation cost related to unvested stock-based compensation arrangements. This compensation is recognized on an accelerated basis with approximately half of the compensation expected to be expensed in the next twelve months, and has a weighted-average recognition period of 1.2 years.

Note 6 — INCOME TAXES

Our tax provision or benefit from income taxes for interim periods is determined using an estimate of our annual effective tax rate, adjusted for discrete items, if any, that are taken into account in the relevant period. Each quarter we update our estimate of the annual effective tax rate, and if our estimated tax rate changes, we make a cumulative adjustment.

Our quarterly tax provision, and our quarterly estimate of our annual effective tax rate, is subject to significant variation due to several factors, including variability in accurately predicting our pre-tax and taxable income and loss and the mix of jurisdictions to which they relate, changes in how we do business, acquisitions (including integrations) and investments, audit-related developments, foreign currency gains (losses), tax law developments (including changes in statutes, regulations, case law, and administrative practices), and relative changes of expenses or losses for which tax benefits are not recognized.

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Additionally, our effective tax rate can be more or less volatile based on the amount of pre-tax income or loss. For example, the impact of discrete items and non-deductible expenses on our effective tax rate is greater when our pre-tax income is lower.

For 2016, our effective tax rate will be favorably affected by the impact of the U.S. federal research and development credit, an increase in the amount of pre-tax income relative to income tax expense, an increase in amortization deductions for which we will realize a tax benefit, and a decline in the proportion of nondeductible expenses and losses for which we may not realize a related tax benefit. We record valuation allowances against the deferred tax assets associated with losses for which we may not realize a related tax benefit. Our effective tax rate will also be adversely affected by state income taxes. We will generate income and losses in lower tax jurisdictions primarily related to our European operations, which are headquartered in Luxembourg.

Our income tax provision for the nine months ended September 30, 2016 was \$1.0 billion, which included \$50 million of discrete tax benefits primarily attributable to audit-related and tax law developments. Our income tax provision for the nine months ended September 30, 2015 was \$498 million, which included \$37 million of discrete tax expense primarily attributed to acquisition integrations. Cash paid for income taxes, net of refunds was \$91 million and \$80 million in Q3 2016 and Q3 2015 and \$317 million and \$200 million for the nine months ended September 30, 2016 and 2015.

As of September 30, 2016, and December 31, 2015, tax contingencies were \$1.7 billion and \$1.2 billion. We expect the total amount of tax contingencies will grow in 2016. In addition, changes in state, federal, and foreign tax laws may increase our tax contingencies. The timing of the resolution of income tax examinations is highly uncertain, and the amounts ultimately paid, if any, upon resolution of the issues raised by the taxing authorities may differ from the amounts accrued. It is reasonably possible that within the next 12 months we will receive additional assessments by various tax authorities or possibly reach resolution of income tax examinations in one or more jurisdictions. These assessments or settlements may or may not result in changes to our contingencies related to positions on prior years' tax filings.

We are under examination, or may be subject to examination, by the Internal Revenue Service ("IRS") for the calendar year 2005 and thereafter. These examinations may lead to ordinary course adjustments or proposed adjustments to our taxes or our net operating losses with respect to years under examination as well as subsequent periods. As previously disclosed, we have received Notices of Proposed Adjustment from the IRS for transactions undertaken in the 2005 and 2006 calendar years relating to transfer pricing with our foreign subsidiaries. The IRS is seeking to increase our U.S. taxable income by an amount that would result in additional federal tax of approximately \$1.5 billion, subject to interest. To date, we have not resolved this matter administratively and are currently contesting it in U.S. Tax Court. We continue to disagree with these IRS positions and intend to defend ourselves vigorously in this matter. In addition to the risk of additional tax for 2005 and 2006 transactions, if this litigation is adversely determined or if the IRS were to seek transfer pricing adjustments of a similar nature for transactions in subsequent years, we could be subject to significant additional tax liabilities.

Certain of our subsidiaries are under examination or investigation or may be subject to examination or investigation by the French Tax Administration ("FTA") for calendar year 2006 and thereafter. These examinations may lead to ordinary course adjustments or proposed adjustments to our taxes. In September 2012, we received proposed tax assessment notices for calendar years 2006 through 2010 relating to the allocation of income between foreign jurisdictions. In June 2015, we received final tax collection notices for these years assessing additional French tax of €196 million, including interest and penalties through September 2012. We disagree with the assessment and intend to contest it vigorously. We plan to pursue all available administrative remedies, and if we are not able to resolve this matter, we plan to pursue judicial remedies. In addition to the risk of additional tax for years 2006 through 2010, if this litigation is adversely determined or if the FTA were to seek adjustments of a similar nature for subsequent years, we could be subject to significant additional tax liabilities. In addition, in October 2014, the European Commission opened a formal investigation to examine whether decisions by the tax authorities in Luxembourg with regard to the corporate income tax paid by certain of our subsidiaries comply with European Union rules on state aid. If this matter is adversely resolved, Luxembourg may be required to assess, and we may be required to pay, additional amounts with respect to current and prior periods from 2003 onwards and our taxes in the future could increase. We are also subject to taxation in various states and other foreign jurisdictions including Canada, China, Germany, India, Italy, Japan, Luxembourg, and the United Kingdom. We are under, or may be subject to, audit or examination and additional assessments by the relevant authorities in respect of these particular jurisdictions primarily for 2008 and thereafter.

Note 7 — SEGMENT INFORMATION

We have organized our operations into three segments: North America, International, and AWS. We allocate to segment results the operating expenses "Fulfillment," "Marketing," "Technology and content," and "General and administrative" based on usage, which is generally reflected in the segment in which the costs are incurred. The majority of technology infrastructure expenses are allocated to the AWS segment based on usage. The majority of the remaining non-infrastructure technology costs are incurred in the U.S. and are allocated to our North America segment. In Q1 2016, we began allocating stock-based compensation and "Other operating expense, net" to our segment results. In our segment results, these amounts are combined

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and titled “Stock-based compensation and other.” There are no internal revenue transactions between our reportable segments. These segments reflect the way the Company evaluates its business performance and manages its operations.

North America

The North America segment primarily consists of amounts earned from retail sales of consumer products (including from sellers) and subscriptions through North America-focused websites such as www.amazon.com, www.amazon.ca, and www.amazon.com.mx. This segment includes export sales from these websites.

International

The International segment primarily consists of amounts earned from retail sales of consumer products (including from sellers) and subscriptions through internationally-focused websites such as www.amazon.com.au, www.amazon.com.br, www.amazon.cn, www.amazon.fr, www.amazon.de, www.amazon.in, www.amazon.it, www.amazon.co.jp, www.amazon.nl, www.amazon.es, and www.amazon.co.uk. This segment includes export sales from these internationally-focused websites (including export sales from these sites to customers in the U.S., Mexico, and Canada), but excludes export sales from our North American websites.

AWS

The AWS segment consists of amounts earned from global sales of compute, storage, database, and other AWS service offerings for start-ups, enterprises, government agencies, and academic institutions.

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Information on reportable segments and reconciliation to consolidated net income is as follows (in millions):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2016	2015	2016	2015
North America				
Net sales	\$ 18,874	\$ 15,006	\$ 53,544	\$ 42,208
Operating expenses	18,180	14,478	50,769	40,461
Operating income before stock-based compensation and other	694	528	\$ 2,775	\$ 1,747
Stock-based compensation and other	439	342	1,230	959
Operating income	<u>\$ 255</u>	<u>\$ 186</u>	<u>\$ 1,545</u>	<u>\$ 788</u>
International				
Net sales	\$ 10,609	\$ 8,267	\$ 30,019	\$ 23,577
Operating expenses	10,941	8,323	30,242	23,728
Operating income (loss) before stock-based compensation and other	(332)	(56)	\$ (223)	\$ (151)
Stock-based compensation and other	209	152	573	440
Operating income (loss)	<u>\$ (541)</u>	<u>\$ (208)</u>	<u>\$ (796)</u>	<u>\$ (591)</u>
AWS				
Net sales	\$ 3,231	\$ 2,085	\$ 8,683	\$ 5,474
Operating expenses	2,210	1,564	6,083	4,297
Operating income before stock-based compensation and other	1,021	521	\$ 2,600	\$ 1,177
Stock-based compensation and other	160	93	418	250
Operating income	<u>\$ 861</u>	<u>\$ 428</u>	<u>\$ 2,182</u>	<u>\$ 927</u>
Consolidated				
Net sales	\$ 32,714	\$ 25,358	\$ 92,246	\$ 71,259
Operating expenses	31,331	24,365	87,094	68,486
Operating income before stock-based compensation and other	1,383	993	5,152	2,773
Stock-based compensation and other	808	587	2,221	1,649
Operating income	575	406	2,931	1,124
Total non-operating income (expense)	(84)	(159)	(205)	(494)
Provision for income taxes	(229)	(161)	(1,012)	(498)
Equity-method investment activity, net of tax	(10)	(7)	(92)	(18)
Net income	<u>\$ 252</u>	<u>\$ 79</u>	<u>\$ 1,622</u>	<u>\$ 114</u>

We have aggregated our products and services into groups of similar products and services and provided the supplemental disclosure of net sales (in millions) below. We evaluate whether additional disclosure is appropriate when a product or service category begins to approach a significant level of net sales. For the periods presented, no individual product or service represented more than 10% of net sales.

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2016	2015	2016	2015
Net Sales:				
Media	\$ 5,728	\$ 5,283	\$ 16,626	\$ 15,286
Electronics and other general merchandise	23,383	17,741	65,890	49,782
AWS	3,231	2,085	8,683	5,474

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	Document			
Other (1)	372	249	1,047	717
Consolidated	<u>\$ 32,714</u>	<u>\$ 25,358</u>	<u>\$ 92,246</u>	<u>\$ 71,259</u>

(1) Includes sales from non-retail activities, such as certain advertising services and our co-branded credit card agreements.

[Table of Contents](#)**Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations****Forward-Looking Statements**

This Quarterly Report on Form 10-Q includes forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. All statements other than statements of historical fact, including statements regarding guidance, industry prospects, or future results of operations or financial position, made in this Quarterly Report on Form 10-Q are forward-looking. We use words such as anticipates, believes, expects, future, intends, and similar expressions to identify forward-looking statements. Forward-looking statements reflect management's current expectations and are inherently uncertain. Actual results could differ materially for a variety of reasons, including, among others, fluctuations in foreign exchange rates, changes in global economic conditions and customer spending, world events, the rate of growth of the Internet, online commerce, and cloud services, the amount that Amazon.com invests in new business opportunities and the timing of those investments, the mix of products and services sold to customers, the mix of net sales derived from products as compared with services, the extent to which we owe income taxes, competition, management of growth, potential fluctuations in operating results, international growth and expansion, the outcomes of legal proceedings and claims, fulfillment, sortation, delivery, and data center optimization, risks of inventory management, seasonality, the degree to which we enter into, maintain, and develop commercial agreements, acquisitions and strategic transactions, payments risks, and risks of fulfillment throughput and productivity. In addition, the current global economic climate amplifies many of these risks. These risks and uncertainties, as well as other risks and uncertainties that could cause our actual results to differ significantly from management's expectations, are described in greater detail in Item 1A of Part II, "Risk Factors."

For additional information, see Item 7 of Part II, "Management's Discussion and Analysis of Financial Condition and Results of Operations — Overview" of our 2015 Annual Report on Form 10-K.

Critical Accounting Judgments

The preparation of financial statements in conformity with GAAP requires estimates and assumptions that affect the reported amounts of assets and liabilities, revenues and expenses, and related disclosures of contingent assets and liabilities in the consolidated financial statements and accompanying notes. The SEC has defined a company's critical accounting policies as the ones that are most important to the portrayal of the company's financial condition and results of operations, and which require the company to make its most difficult and subjective judgments, often as a result of the need to make estimates of matters that are inherently uncertain. Based on this definition, we have identified the critical accounting policies and judgments addressed below. We also have other key accounting policies, which involve the use of estimates, judgments, and assumptions that are significant to understanding our results. For additional information, see Item 8 of Part II, "Financial Statements and Supplementary Data — Note 1 — Description of Business and Accounting Policies," of our 2015 Annual Report on Form 10-K and Item 1 of Part I, "Financial Statements — Note 1 — Accounting Policies," of this Form 10-Q. Although we believe that our estimates, assumptions, and judgments are reasonable, they are based upon information presently available. Actual results may differ significantly from these estimates under different assumptions, judgments, or conditions.

Inventories

Inventories, consisting of products available for sale, are primarily accounted for using the first-in first-out method, and are valued at the lower of cost or market value. This valuation requires us to make judgments, based on currently-available information, about the likely method of disposition, such as through sales to individual customers, returns to product vendors, or liquidations, and expected recoverable values of each disposition category. These assumptions about future disposition of inventory are inherently uncertain and changes in our estimates and assumptions may cause us to realize material write-downs in the future. As a measure of sensitivity, for every 1% of additional inventory valuation allowance as of September 30, 2016, we would have recorded an additional cost of sales of approximately \$120 million.

In addition, we enter into supplier commitments for certain electronic device components. These commitments are based on forecasted customer demand. If we reduce these commitments, we may incur additional costs.

Goodwill

We evaluate goodwill for impairment annually or more frequently when an event occurs or circumstances change that indicate the carrying value may not be recoverable. The measurement date of our annual goodwill impairment test is April 1. In testing goodwill for impairment, we may elect to utilize a qualitative assessment to evaluate whether it is more likely than not that the fair value of a reporting unit is less than its carrying amount. If our qualitative assessment indicates that goodwill impairment is more likely than not, we perform a two-step impairment test. We test goodwill for impairment under the two-step impairment test by first comparing the book value of net assets to the fair value of the reporting units. If the fair value is determined to be less than the book value or qualitative factors indicate that it is more likely than not that goodwill is impaired,

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a second step is performed to compute the amount of impairment as the difference between the estimated fair value of goodwill and the carrying value. We estimate the fair value of the reporting units using discounted cash flows. Forecasts of future cash flows are based on our best estimate of future net sales and operating expenses, based primarily on expected category expansion, pricing, market segment share, and general economic conditions. Certain estimates of discounted cash flows involve businesses and geographies with limited financial history and developing revenue models. Changes in these forecasts could significantly change the amount of impairment recorded, if any.

We completed the required annual testing of goodwill for impairment for all reporting units as of April 1, 2016, and determined that goodwill was not impaired. During the quarter, management monitored the actual performance of the business relative to the fair value assumptions used during our annual goodwill impairment test. For the periods presented, no triggering events were identified that required an interim impairment test. As a measure of sensitivity, a 10% decrease in the fair value of any of our reporting units as of April 1, 2016, would have had no impact on the carrying value of our goodwill.

Financial and credit market volatility directly impacts the fair value measurement through our weighted-average cost of capital that we use to determine a discount rate and through our stock price that we use to determine our market capitalization. During times of volatility, significant judgment must be applied to determine whether credit or stock price changes are short-term in nature or a longer-term trend. We have not made any significant changes to the accounting methodology used to evaluate goodwill for impairment. Changes in our estimated future cash flows and asset fair values may cause us to realize material impairment charges in the future. As a measure of sensitivity, a prolonged 20% decrease from our September 30, 2016 closing stock price would not be an indicator of possible impairment.

Stock-Based Compensation

We measure compensation cost for stock awards at fair value and recognize it as compensation expense over the service period for awards expected to vest. The fair value of restricted stock units is determined based on the number of shares granted and the quoted price of our common stock and the fair value of stock options is estimated on the date of grant using a Black-Scholes model. The estimated number of stock awards that will ultimately vest requires judgment, and to the extent actual results or updated estimates differ from our current estimates, such amounts will be recorded as a cumulative adjustment in the period estimates are revised. We consider many factors when estimating expected forfeitures, including employee level, economic conditions, time remaining to vest, and historical forfeiture experience. We update our estimated forfeiture rate quarterly. We have not made any significant changes to the accounting methodology used to evaluate stock-based compensation. Changes in our estimates and assumptions may cause us to realize material changes in stock-based compensation expense in the future. As a measure of sensitivity, a 1% change to our estimated forfeiture rate would have had an approximately \$70 million impact on our Q3 2016 operating income. Our estimated forfeiture rate as of September 30, 2016, and December 31, 2015, was 28%.

We utilize the accelerated method, rather than the straight-line method, for recognizing compensation expense. For example, over 50% of the compensation cost related to an award vesting ratably over four years is expensed in the first year. If forfeited early in the life of an award, the compensation expense adjustment is much greater under an accelerated method than under a straight-line method.

Income Taxes

We are subject to income taxes in the U.S. (federal and state) and numerous foreign jurisdictions. Tax laws, regulations, and administrative practices in various jurisdictions may be subject to significant change due to economic, political, and other conditions, and significant judgment is required in evaluating and estimating our provision and accruals for these taxes. There are many transactions that occur during the ordinary course of business for which the ultimate tax determination is uncertain. Our effective tax rates could be affected by earnings being lower than anticipated in jurisdictions where we have lower statutory rates and higher than anticipated in jurisdictions where we have higher statutory rates, losses incurred in jurisdictions for which we are not able to realize the related tax benefit, changes in foreign currency exchange rates, entry into new businesses and geographies and changes to our existing businesses, acquisitions (including integrations) and investments, changes in our deferred tax assets and liabilities and their valuation, and changes in the relevant tax, accounting, and other laws, regulations, administrative practices, principles, and interpretations, including fundamental changes to the tax laws applicable to corporate multinationals. The U.S., the European Union and its member states, and a number of other countries are actively pursuing changes in this regard.

Except as required under U.S. tax laws, we do not provide for U.S. taxes on our undistributed earnings of foreign subsidiaries that have not been previously taxed since we intend to invest such undistributed earnings indefinitely outside of the U.S. If our intent changes or if these funds are needed for our U.S. operations, we would be required to accrue or pay U.S. taxes on some or all of these undistributed earnings and our effective tax rate would be adversely affected. We are also currently subject to audit in various jurisdictions, and these jurisdictions may assess additional income tax liabilities against us.

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Developments in an audit, litigation, or the relevant laws, regulations, administrative practices, principles, and interpretations could have a material effect on our operating results or cash flows in the period or periods for which that development occurs, as well as for prior and subsequent periods. For instance, the IRS is seeking to increase our U.S. taxable income related to transfer pricing with our foreign subsidiaries for transactions undertaken in 2005 and 2006, and we are currently contesting the matter in U.S. Tax Court. In addition to the risk of additional tax for 2005 and 2006 transactions, if this litigation is adversely determined or if the IRS were to seek transfer pricing adjustments of a similar nature for transactions in subsequent years, we could be subject to significant additional tax liabilities. In addition, in October 2014, the European Commission opened a formal investigation to examine whether decisions by the tax authorities in Luxembourg with regard to the corporate income tax paid by certain of our subsidiaries comply with European Union rules on state aid. If this matter is adversely resolved, Luxembourg may be required to assess, and we may be required to pay, additional amounts with respect to current and prior periods and our taxes in the future could increase. Although we believe our tax estimates are reasonable, the final outcome of tax audits, investigations, and any related litigation could be materially different from our historical income tax provisions and accruals.

Recent Accounting Pronouncements

See Item 1 of Part I, “Financial Statements — Note 1 — Accounting Policies — Recent Accounting Pronouncements.”

[Table of Contents](#)**Liquidity and Capital Resources**

Cash flow information is as follows (in millions):

	Three Months Ended September 30,		Nine Months Ended September 30,		Twelve Months Ended September 30,	
	2016	2015	2016	2015	2016	2015
Cash provided by (used in):						
Operating activities	\$ 4,486	\$ 2,610	\$ 5,791	\$ 3,108	\$ 14,603	\$ 9,823
Investing activities	(2,570)	(1,377)	(5,702)	(4,600)	(7,552)	(7,065)
Financing activities	(827)	(730)	(2,655)	(2,073)	(4,345)	3,136

Our principal sources of liquidity are cash flows generated from operations and our cash, cash equivalents, and marketable securities balances, which, at fair value, were \$18.3 billion and \$19.8 billion as of September 30, 2016, and December 31, 2015. Amounts held in foreign currencies were \$5.9 billion and \$7.3 billion as of September 30, 2016, and December 31, 2015, and were primarily Euros, Japanese Yen, and British Pounds.

Cash provided by (used in) operating activities was \$4.5 billion and \$2.6 billion for Q3 2016 and Q3 2015, and \$5.8 billion and \$3.1 billion for the nine months ended September 30, 2016 and 2015. Our operating cash flows result primarily from cash received from our consumer, seller, developer, enterprise, and content creator customers, advertising agreements, and our co-branded credit card agreements, offset by cash payments we make for products and services, employee compensation (less amounts capitalized related to internal-use software that are reflected as cash used in investing activities), payment processing and related transaction costs, operating leases, and interest payments on our long-term obligations. Cash received from our customers and other activities generally corresponds to our net sales. Because consumers primarily use credit cards to buy from us, our receivables from consumers settle quickly. The increase in operating cash flow for the trailing twelve months ended September 30, 2016, compared to the comparable prior year period, was primarily due to the increase in net income, excluding non-cash charges such as depreciation, amortization, and stock-based compensation. Cash provided by (used in) operating activities is also subject to changes in working capital. Working capital at any specific point in time is subject to many variables, including seasonality, inventory management and category expansion, the timing of cash receipts and payments, vendor payment terms, and fluctuations in foreign exchange rates.

Cash provided by (used in) investing activities corresponds with cash capital expenditures, including leasehold improvements, internal-use software and website development costs, cash outlays for acquisitions, investments in other companies and intellectual property rights, and purchases, sales, and maturities of marketable securities. Cash provided by (used in) investing activities was \$(2.6) billion and \$(1.4) billion for Q3 2016 and Q3 2015, and \$(5.7) billion and \$(4.6) billion for the nine months ended September 30, 2016 and 2015, with the variability caused primarily by our decision to purchase or lease property and equipment, purchases, maturities, and sales of marketable securities, and changes in cash paid for acquisitions. Cash capital expenditures were \$1.8 billion and \$1.2 billion during Q3 2016 and Q3 2015, and \$4.7 billion and \$3.3 billion for the nine months ended September 30, 2016 and 2015. This primarily reflects additional investments in support of continued business growth due to investments in technology infrastructure (the majority of which is to support AWS) and additional capacity to support our fulfillment operations. Capital expenditures included \$97 million and \$127 million for internal-use software and website development during Q3 2016 and Q3 2015, and \$326 million and \$406 million for the nine months ended September 30, 2016 and 2015. Stock-based compensation capitalized for internal-use software and website development costs does not affect cash flows. We made cash payments, net of acquired cash, related to acquisition and other investment activity of \$84 million and \$105 million during Q3 2016 and Q3 2015, and \$113 million and \$478 million for the nine months ended September 30, 2016 and 2015.

Cash provided by (used in) financing activities was \$(827) million and \$(730) million for Q3 2016 and Q3 2015, and \$(2.7) billion and \$(2.1) billion for the nine months ended September 30, 2016 and 2015. Cash outflows from financing activities result from principal repayments on obligations related to capital leases and finance leases and repayments of long-term debt and other. Principal repayments on obligations related to capital leases and finance leases and repayments of long-term debt and other were \$1.0 billion and \$858 million in Q3 2016 and Q3 2015, and \$3.2 billion and \$2.5 billion for the nine months ended September 30, 2016 and 2015. Property and equipment acquired under capital leases was \$1.4 billion and \$1.0 billion during Q3 2016 and Q3 2015, and \$3.7 billion and \$3.4 billion for the nine months ended September 30, 2016 and 2015, reflecting investments in support of continued business growth primarily due to investments in technology infrastructure for AWS, which investments we expect to continue over time. Cash inflows from financing activities primarily result from proceeds from long-term debt and other and tax benefits relating to excess stock-based compensation deductions. Proceeds from long-term debt and other were \$8 million and \$33 million in Q3 2016 and Q3 2015, and \$83 million and \$260 million for the nine months ended September 30, 2016 and 2015. Tax benefits relating to excess stock-based compensation deductions are presented as financing cash flows. Cash inflows from tax benefits related to stock-based compensation deductions were \$173

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million and \$95 million in Q3 2016 and Q3 2015, and \$493 million and \$212 million for the nine months ended September 30, 2016 and 2015.

We had no borrowings outstanding under our \$3.0 billion Credit Agreement as of September 30, 2016. See Item 1 of Part I, “Financial Statements — Note 4 — Long-Term Debt” for additional information.

We recorded net tax provisions of \$229 million and \$161 million in Q3 2016 and Q3 2015, and \$1.0 billion and \$498 million for the nine months ended September 30, 2016 and 2015. Except as required under U.S. tax laws, we do not provide for U.S. taxes on our undistributed earnings of foreign subsidiaries that have not been previously taxed since we intend to invest such undistributed earnings indefinitely outside of the U.S. If our intent changes or if these funds are needed for our U.S. operations, we would be required to accrue or pay U.S. taxes on some or all of these undistributed earnings, and our effective tax rate would be adversely affected. We have tax benefits relating to excess stock-based compensation deductions and accelerated depreciation deductions that are being utilized to reduce our U.S. taxable income. In December 2015, U.S. legislation was enacted that extended accelerated depreciation deductions on qualifying property through 2019. Cash taxes paid, net of refunds were \$91 million and \$80 million for Q3 2016 and Q3 2015, and \$317 million and \$200 million for the nine months ended September 30, 2016 and 2015. As of December 31, 2015, our federal net operating loss carryforward was approximately \$1.1 billion and we had approximately \$622 million of federal tax credits potentially available to offset future tax liabilities. Our federal tax credits are primarily related to the U.S. federal research and development credit, which was made permanent in 2015. As we utilize our federal net operating losses and tax credits, we expect cash paid for taxes to significantly increase. We endeavor to manage our global taxes on a cash basis, rather than on a financial reporting basis.

Our liquidity is also affected by restricted cash balances that are pledged as collateral for standby and trade letters of credit, guarantees, debt, and real estate leases. To the extent we process payments for third-party sellers or offer certain types of stored value to our customers, some jurisdictions may restrict our use of those funds. These restrictions would result in the reclassification of a portion of our cash and cash equivalents from “Cash and cash equivalents” to restricted cash, which is classified within “Accounts receivable, net and other” on our consolidated balance sheets. As of September 30, 2016, and December 31, 2015, restricted cash, cash equivalents, and marketable securities were \$468 million and \$285 million. See Item 1 of Part I, “Financial Statements — Note 3 — Commitments and Contingencies” for additional discussion of our principal contractual commitments, as well as our pledged assets. Purchase obligations and open purchase orders, consisting of inventory and significant non-inventory commitments, were \$10.6 billion as of September 30, 2016. Purchase obligations and open purchase orders are generally cancellable in full or in part through the contractual provisions.

On average, our high inventory velocity means we generally collect from consumers before our payments to suppliers come due. Inventory turnover¹ was 9 for Q3 2016 and Q3 2015. We expect variability in inventory turnover over time since it is affected by several factors, including our product mix, the mix of sales by us and by third-party sellers, our continuing focus on in-stock inventory availability and selection of product offerings, our investment in new geographies and product lines, and the extent to which we choose to utilize third-party fulfillment providers.

We believe that cash flows generated from operations and our cash, cash equivalents, and marketable securities balances, as well as borrowing available under our credit agreements, will be sufficient to meet our anticipated operating cash needs for at least the next 12 months. However, any projections of future cash needs and cash flows are subject to substantial uncertainty. See Item 1A of Part II, “Risk Factors.” We continually evaluate opportunities to sell additional equity or debt securities, obtain credit facilities, obtain capital, finance, and operating lease arrangements, repurchase common stock, pay dividends, or repurchase, refinance, or otherwise restructure our debt for strategic reasons or to further strengthen our financial position.

The sale of additional equity or convertible debt securities would likely be dilutive to our shareholders. In addition, we will, from time to time, consider the acquisition of, or investment in, complementary businesses, products, services, capital infrastructure, and technologies, which might affect our liquidity requirements or cause us to secure additional financing, or issue additional equity or debt securities. There can be no assurance that additional lines-of-credit or financing instruments will be available in amounts or on terms acceptable to us, if at all.

(1) Inventory turnover is the quotient of trailing twelve month cost of sales to average inventory over five quarter ends.

[Table of Contents](#)**Results of Operations**

We have organized our operations into three segments: North America, International, and AWS. In the first quarter of 2016, we began allocating stock-based compensation and “Other operating expense, net” to our segment results. These segments reflect the way the Company evaluates its business performance and manages its operations. See Item 1 of Part I, “Financial Statements — Note 7 — Segment Information.”

Net Sales

Net sales include product and service sales. Product sales represent revenue from the sale of products and related shipping fees and digital media content where we record revenue gross. Service sales represent third-party seller fees earned (including commissions) and related shipping fees, AWS sales, digital content subscriptions, advertising services, and our co-branded credit card agreements. Amazon Prime membership fees are allocated between product sales and service sales and amortized over the life of the membership according to the estimated delivery of services. Net sales information is as follows (in millions):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2016	2015	2016	2015
Net Sales:				
North America	\$ 18,874	\$ 15,006	\$ 53,544	\$ 42,208
International	10,609	8,267	30,019	23,577
AWS	3,231	2,085	8,683	5,474
Total consolidated	<u>\$ 32,714</u>	<u>\$ 25,358</u>	<u>\$ 92,246</u>	<u>\$ 71,259</u>
Year-over-year Percentage Growth:				
North America	26%	28%	27%	26%
International	28	7	27	3
AWS	55	78	59	70
Total consolidated	29	23	29	19
Year-over-year Percentage Growth, excluding the effect of foreign exchange rates:				
North America	26%	29%	27%	26%
International	28	24	27	20
AWS	55	78	59	70
Total consolidated	29	30	29	26
Net Sales Mix:				
North America	58%	59%	58%	59%
International	32	33	33	33
AWS	10	8	9	8
Total consolidated	<u>100%</u>	<u>100%</u>	<u>100%</u>	<u>100%</u>

Sales increased 29% in Q3 2016 and 29% for the nine months ended September 30, 2016, compared to the comparable prior year periods. Changes in foreign currency exchange rates impacted net sales by \$52 million and \$(1.3) billion for Q3 2016 and Q3 2015, and by \$8 million and \$(4.0) billion for the nine months ended September 30, 2016 and 2015. For a discussion of the effect on sales growth of foreign exchange rates, see “Effect of Foreign Exchange Rates” below.

North America sales increased 26% in Q3 2016 and 27% for the nine months ended September 30, 2016, compared to the comparable prior year periods. The sales growth primarily reflects increased unit sales, including sales by marketplace sellers. Increased unit sales were driven largely by our continued efforts to reduce prices for our customers, including from our shipping offers, sales in faster growing categories such as electronics and other general merchandise, increased in-stock inventory availability, and increased selection of product offerings.

International sales increased 28% in Q3 2016 and 27% for the nine months ended September 30, 2016, compared to the comparable prior year periods. The sales growth primarily reflects increased unit sales, including sales by marketplace sellers. Changes in foreign currency exchange rates impacted International net sales by \$54 million and \$(1.3) billion for Q3 2016 and Q3

2015, and \$62 million and \$(3.9) billion for the nine months ended September 30, 2016 and 2015. Increased unit sales were driven largely by our continued efforts to reduce prices for our customers, including from our shipping offers, sales in faster

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growing categories such as electronics and other general merchandise, increased in-stock inventory availability, and increased selection of product offerings.

AWS sales increased 55% in Q3 2016 and 59% for the nine months ended September 30, 2016, compared to the comparable prior year periods. The sales growth primarily reflects increased customer usage, partially offset by pricing changes. Pricing changes were driven largely by our continued efforts to reduce prices for our customers.

Operating Income (Loss)

Operating income (loss) by segment is as follows (in millions):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2016	2015	2016	2015
Operating Income (Loss):				
North America	\$ 255	\$ 186	\$ 1,545	\$ 788
International	(541)	(208)	(796)	(591)
AWS	861	428	2,182	927
Total consolidated	<u>\$ 575</u>	<u>\$ 406</u>	<u>\$ 2,931</u>	<u>\$ 1,124</u>

Operating income increased to \$575 million in Q3 2016, from \$406 million in Q3 2015, and increased to \$2.9 billion for the nine months ended September 30, 2016, from \$1.1 billion for the nine months ended September 30, 2015. We believe that operating income is a more meaningful measure than gross profit and gross margin due to the diversity of our product categories and services.

The increase in North America operating income in absolute dollars in Q3 2016 and for the nine months ended September 30, 2016, compared to the comparable prior year periods, is primarily due to increased unit sales, including sales by marketplace sellers, partially offset by increased levels of operating expenses to expand our fulfillment capacity and spending on technology infrastructure and marketing efforts. There was a favorable impact from foreign exchange rates of \$6 million for Q3 2016 and \$16 million for the nine months ended September 30, 2016.

The increase in International operating loss in absolute dollars in Q3 2016 and for the nine months ended September 30, 2016, compared to the comparable prior year periods, is primarily due to increased levels of operating expenses to expand our fulfillment capacity and spending on technology infrastructure and marketing efforts, partially offset by increased unit sales, including sales by marketplace sellers. There was a favorable impact from foreign exchange rates of \$22 million for Q3 2016 and \$83 million for the nine months ended September 30, 2016.

The increase in AWS operating income in absolute dollars in Q3 2016 and for the nine months ended September 30, 2016, compared to the comparable prior year periods, is primarily due to increased customer usage and cost structure productivity, partially offset by pricing changes and increased spending on technology infrastructure and payroll and related expenses, which was primarily driven by additional investments to support the business growth. There was an unfavorable impact from foreign exchange rates of \$(20) million for Q3 2016 and a favorable impact of \$4 million for the nine months ended September 30, 2016.

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Supplemental information about outbound shipping results for our North America and International segments is as follows (in millions):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2016	2015	2016	2015
Outbound Shipping Activity:				
Shipping revenue (1)(2)(3)	\$ 2,154	\$ 1,494	\$ 5,973	\$ 4,192
Shipping costs (4)	(3,897)	(2,720)	(10,533)	(7,369)
Net shipping cost	<u>\$ (1,743)</u>	<u>\$ (1,226)</u>	<u>\$ (4,560)</u>	<u>\$ (3,177)</u>
Year-over-year Percentage Growth:				
Shipping revenue	44%	43%	42%	50%
Shipping costs	43	35	43	30
Net shipping cost	42	26	44	11

(1) Excludes amounts charged on shipping activities by third-party sellers where we do not provide the fulfillment service.

(2) Includes a portion of amounts earned from Amazon Prime memberships.

(3) Includes amounts earned from Fulfillment by Amazon programs related to shipping services.

(4) Includes sortation and delivery center costs.

We expect our cost of shipping to continue to increase to the extent our customers accept and use our shipping offers at an increasing rate, our product mix shifts to the electronics and other general merchandise category, we reduce shipping rates, we use more expensive shipping methods, and we offer additional services. We seek to mitigate costs of shipping over time in part through achieving higher sales volumes, optimizing placement of fulfillment centers, negotiating better terms with our suppliers, and achieving better operating efficiencies. We believe that offering low prices to our customers is fundamental to our future success, and one way we offer lower prices is through shipping offers.

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We have aggregated our North America and International segments' products and services into groups of similar products and services and provided the supplemental disclosure of net sales (in millions) below. We evaluate whether additional disclosure is appropriate when a product or service category begins to approach a significant level of net sales. For the periods presented, no individual product or service represented more than 10% of net sales.

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2016	2015	2016	2015
Net Sales:				
North America				
Media	\$ 3,237	\$ 2,963	\$ 9,372	\$ 8,552
Electronics and other general merchandise	15,327	11,840	43,297	33,077
Other (1)	310	203	875	579
Total North America	<u>\$ 18,874</u>	<u>\$ 15,006</u>	<u>\$ 53,544</u>	<u>\$ 42,208</u>
International				
Media	\$ 2,491	\$ 2,320	\$ 7,254	\$ 6,734
Electronics and other general merchandise	8,056	5,901	22,593	16,705
Other (1)	62	46	172	138
Total International	<u>\$ 10,609</u>	<u>\$ 8,267</u>	<u>\$ 30,019</u>	<u>\$ 23,577</u>
Year-over-year Percentage Growth:				
North America				
Media	9%	8 %	10%	7 %
Electronics and other general merchandise	29	35	31	32
Other	53	18	51	19
Total North America	26	28	27	26
International				
Media	7%	(8)%	8%	(11)%
Electronics and other general merchandise	36	14	35	9
Other	37	10	24	(4)
Total International	28	7	27	3
Year-over-year Percentage Growth, excluding the effect of foreign exchange rates:				
North America				
Media	9%	9 %	10%	7 %
Electronics and other general merchandise	29	35	31	33
Other	53	18	51	18
Total North America	26	29	27	26
International				
Media	7%	6 %	7%	4 %
Electronics and other general merchandise	36	32	35	28
Other	43	26	27	11
Total International	28	24	27	20

(1) Includes sales from non-retail activities, such as certain advertising services and our co-branded credit card agreements.

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Information about operating expenses follows (in millions):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2016	2015	2016	2015
Operating Expenses:				
Cost of sales	\$ 21,260	\$ 16,755	\$ 59,306	\$ 47,310
Fulfillment	4,335	3,230	11,900	8,865
Marketing	1,738	1,264	4,720	3,496
Technology and content	4,135	3,197	11,541	8,971
General and administrative	639	463	1,715	1,357
Other operating expense, net	32	43	133	136
Total operating expenses	<u>\$ 32,139</u>	<u>\$ 24,952</u>	<u>\$ 89,315</u>	<u>\$ 70,135</u>
Year-over-year Percentage Growth:				
Cost of sales	27 %	15%	25 %	12%
Fulfillment	34	22	34	21
Marketing	37	27	35	25
Technology and content	29	32	29	35
General and administrative	38	14	26	22
Other operating expense, net	(25)	38	(2)	44
Percent of Net Sales:				
Cost of sales	65.0 %	66.1%	64.3 %	66.4%
Fulfillment	13.3	12.7	12.9	12.4
Marketing	5.3	5.0	5.1	4.9
Technology and content	12.6	12.6	12.5	12.6
General and administrative	2.0	1.8	1.9	1.9
Other operating expense, net	0.1	0.2	0.1	—

Cost of Sales

Cost of sales primarily consists of the purchase price of consumer products, digital media content costs where we record revenue gross, including Prime Video and Prime Music, packaging supplies, sortation and delivery centers and related equipment costs, and inbound and outbound shipping costs, including where we are the transportation service provider. Shipping costs to receive products from our suppliers are included in our inventory and recognized as cost of sales upon sale of products to our customers.

The increase in cost of sales in absolute dollars in Q3 2016 and for the nine months ended September 30, 2016, compared to the comparable prior year periods, is primarily due to increased product and shipping costs resulting from increased sales.

Costs to operate our AWS segment are primarily classified as “Technology and content” as we leverage a shared infrastructure that supports both our internal technology requirements and external sales to AWS customers.

Fulfillment

Fulfillment costs primarily consist of those costs incurred in operating and staffing our North America and International fulfillment and customer service centers and payment processing costs. While AWS payment processing and related transaction costs are included in fulfillment, AWS costs are primarily classified as “Technology and content.” Fulfillment costs as a percentage of net sales may vary due to several factors, such as payment processing and related transaction costs, our level of productivity and accuracy, changes in volume, size, and weight of units received and fulfilled, timing of fulfillment capacity expansion, the extent we utilize fulfillment services provided by third parties, mix of products and services sold, and our ability to affect customer service contacts per unit by implementing improvements in our operations and enhancements to our customer self-service features. Additionally, because payment processing and fulfillment costs associated with seller transactions are based on the gross purchase price of underlying transactions, and payment processing and related transaction

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and fulfillment costs are higher as a percentage of sales versus our retail sales, sales by our sellers have higher fulfillment costs as a percent of net sales.

The increase in fulfillment costs in absolute dollars in Q3 2016 and for the nine months ended September 30, 2016, compared to the comparable prior year periods, is primarily due to variable costs corresponding with increased physical and digital product and service sales volume, inventory levels, and sales mix; costs from expanding fulfillment capacity; and payment processing and related transaction costs.

We seek to expand our fulfillment capacity to accommodate a greater selection and in-stock inventory levels and to meet anticipated shipment volumes from sales of our own products as well as sales by third parties for which we provide the fulfillment services. We regularly evaluate our facility requirements.

Marketing

We direct customers to our websites primarily through a number of targeted online marketing channels, such as our Associates program, sponsored search, portal advertising, email marketing campaigns, direct sales, and other initiatives. Our marketing expenses are largely variable, based on growth in sales and changes in rates. To the extent there is increased or decreased competition for these traffic sources, or to the extent our mix of these channels shifts, we would expect to see a corresponding change in our marketing expense.

The increase in marketing costs in absolute dollars in Q3 2016 and for the nine months ended September 30, 2016, compared to the comparable prior year periods, is primarily due to increased spending on online marketing channels and television advertising, as well as payroll and related expenses.

While costs associated with Amazon Prime memberships and other shipping offers are not included in marketing expense, we view these offers as effective worldwide marketing tools, and intend to continue offering them indefinitely.

Technology and Content

Technology costs consist principally of research and development activities including payroll and related expenses for employees involved in application, production, maintenance, operation, and development for new and existing products and services, as well as AWS and other technology infrastructure expenses. Content costs consist principally of payroll and related expenses for employees involved in category expansion, editorial content, buying, and merchandising selection. Digital media content costs related to revenue recorded gross, including Prime Video, are included in cost of sales.

We seek to invest efficiently in several areas of technology and content so we may continue to enhance the customer experience and improve our process efficiency through rapid technology developments while operating at an ever increasing scale. Our technology and content investment and capital spending projects often support a variety of product and service offerings due to geographic expansion and the cross-functionality of our systems and operations. We expect spending in technology and content to increase over time as we continue to add employees and technology infrastructure. The increase in technology and content costs in absolute dollars in Q3 2016 and for the nine months ended September 30, 2016, compared to the comparable prior year periods, is primarily due to increased payroll and related costs associated with expanding our products and services, and an increase in spending on technology infrastructure principally allocated to our AWS segment.

Technology infrastructure expenses consist of servers, networking equipment, and data center related depreciation, rent, utilities, and payroll expenses. These costs are allocated to segments based on usage. During Q3 2016, we expanded our technology infrastructure principally by increasing our capacity for AWS service offerings globally, compared to the comparable prior year period. Additionally, the costs associated with operating and maintaining our expanded infrastructure have increased over time, corresponding with increased usage. We expect these trends to continue over time as we invest in technology infrastructure to support increased usage. See Item 7 of Part II, "Management's Discussion and Analysis of Financial Condition and Results of Operations — Overview" of our 2015 Annual Report on Form 10-K for a discussion of how management views advances in technology and the importance of innovation.

The increase in payroll and related costs is primarily due to the expansion of existing product categories and service offerings, including AWS, and initiatives to introduce new product and service offerings.

During Q3 2016 and Q3 2015, we capitalized \$118 million (including \$21 million of stock-based compensation) and \$157 million (including \$30 million of stock-based compensation) of costs associated with internal-use software and website development. For the nine months ended September 30, 2016 and 2015, we capitalized \$399 million (including \$72 million of stock-based compensation) and \$494 million (including \$88 million of stock-based compensation) of costs associated with internal-use software and website development. Amortization of previously capitalized amounts was \$160 million and \$159 million for Q3 2016 and Q3 2015, and \$481 million and \$468 million for the nine months ended September 30, 2016 and 2015.

[Table of Contents](#)*General and Administrative*

The increase in general and administrative costs in absolute dollars in Q3 2016 and for the nine months ended September 30, 2016, compared to the comparable prior year periods, is primarily due to increases in payroll and related expenses.

Other Operating Expense, Net

Other operating expense, net was \$32 million and \$43 million for Q3 2016 and Q3 2015, and \$133 million and \$136 million for the nine months ended September 30, 2016 and 2015, and was primarily related to the amortization of intangible assets.

Interest Income and Expense

Our interest income was \$26 million and \$13 million during Q3 2016 and Q3 2015, and \$71 million and \$37 million for the nine months ended September 30, 2016 and 2015. We generally invest our excess cash in investment grade short- to intermediate-term fixed income securities and AAA-rated money market funds. Our interest income corresponds with the average balance of invested funds based on the prevailing rates, which vary depending on the geographies and currencies in which they are invested.

Interest expense was \$118 million and \$116 million during Q3 2016 and Q3 2015, and \$351 million and \$344 million for the nine months ended September 30, 2016 and 2015. The increase is primarily due to increases in our long-term debt and capital and finance lease arrangements.

Other Income (Expense), Net

Other income (expense), net was \$8 million and \$(56) million during Q3 2016 and Q3 2015, and \$75 million and \$(187) million for the nine months ended September 30, 2016 and 2015. The primary component of other income (expense), net is related to foreign currency and equity warrant gains (losses).

Income Taxes

Our tax provision or benefit from income taxes for interim periods is determined using an estimate of our annual effective tax rate, adjusted for discrete items, if any, that are taken into account in the relevant period. Each quarter we update our estimate of the annual effective tax rate, and if our estimated tax rate changes, we make a cumulative adjustment.

Our quarterly tax provision, and our quarterly estimate of our annual effective tax rate, is subject to significant variation due to several factors, including variability in accurately predicting our pre-tax and taxable income and loss and the mix of jurisdictions to which they relate, changes in how we do business, acquisitions (including integrations) and investments, audit-related developments, foreign currency gains (losses), tax law developments (including changes in statutes, regulations, case law, and administrative practices), and relative changes of expenses or losses for which tax benefits are not recognized. Additionally, our effective tax rate can be more or less volatile based on the amount of pre-tax income or loss. For example, the impact of discrete items and non-deductible expenses on our effective tax rate is greater when our pre-tax income is lower.

For 2016, our effective tax rate will be favorably affected by the impact of the U.S. federal research and development credit, an increase in the amount of pre-tax income relative to income tax expense, an increase in amortization deductions for which we will realize a tax benefit, and a decline in the proportion of nondeductible expenses and losses for which we may not realize a related tax benefit. We record valuation allowances against the deferred tax assets associated with losses for which we may not realize a related tax benefit. Our effective tax rate will also be adversely affected by state income taxes. We will generate income and losses in lower tax jurisdictions primarily related to our European operations, which are headquartered in Luxembourg.

Our income tax provision for the nine months ended September 30, 2016 was \$1.0 billion, which included \$50 million of discrete tax benefits primarily attributable to audit-related and tax law developments. Our income tax provision for the nine months ended September 30, 2015 was \$498 million, which included \$37 million of discrete tax expense primarily attributed to acquisition integrations.

Equity-Method Investment Activity, Net of Tax

Equity-method investment activity, net of tax, was \$(10) million and \$(7) million during Q3 2016 and Q3 2015, and \$(92) million and \$(18) million for the nine months ended September 30, 2016 and 2015. The primary components of this activity were impairments recorded in Q1 2016 and our equity-method investment losses during the periods.

[Table of Contents](#)*Effect of Foreign Exchange Rates*

The effect on our net sales, operating expenses, and operating income from changes in foreign exchange rates versus the U.S. Dollar is as follows (in millions):

	Three Months Ended September 30,						Nine Months Ended September 30,					
	2016			2015			2016			2015		
	At Prior Year Rates (1)	Exchange Rate Effect (2)	As Reported	At Prior Year Rates (1)	Exchange Rate Effect (2)	As Reported	At Prior Year Rates (1)	Exchange Rate Effect (2)	As Reported	At Prior Year Rates (1)	Exchange Rate Effect (2)	As Reported
Net sales	\$ 32,662	\$ 52	\$ 32,714	\$ 26,673	\$ (1,315)	\$ 25,358	\$ 92,238	\$ 8	\$ 92,246	\$ 75,254	\$ (3,995)	\$ 71,259
Operating expenses	32,095	44	32,139	26,292	(1,340)	24,952	89,411	(96)	89,315	74,126	(3,991)	70,135
Operating income	567	8	575	381	25	406	2,828	103	2,931	1,128	(4)	1,124

- (1) Represents the outcome that would have resulted had foreign exchange rates in the reported period been the same as those in effect in the comparable prior year period for operating results.
- (2) Represents the increase or decrease in reported amounts resulting from changes in foreign exchange rates from those in effect in the comparable prior year period for operating results.

The effect of foreign exchange rates is a non-GAAP financial measure. See “Non-GAAP Financial Measures” below.

Non-GAAP Financial Measures

Regulation G, Conditions for Use of Non-GAAP Financial Measures, and other SEC regulations define and prescribe the conditions for use of certain non-GAAP financial information. Our measures of free cash flows and the effect of foreign exchange rates on our consolidated statements of operations, meet the definition of non-GAAP financial measures.

We provide multiple measures of free cash flows because we believe these measures provide additional perspective on the impact of acquiring property and equipment with cash and through capital and finance leases.

Free Cash Flow

Free cash flow is cash flow from operations reduced by “Purchases of property and equipment, including internal-use software and website development, net,” which is included in cash flow from investing activities. The following is a reconciliation of free cash flow to the most comparable GAAP cash flow measure, “Net cash provided by (used in) operating activities,” for the trailing twelve months ended September 30, 2016 and 2015 (in millions):

	Twelve Months Ended September 30,	
	2016	2015
Net cash provided by (used in) operating activities	\$ 14,603	\$ 9,823
Purchases of property and equipment, including internal-use software and website development, net	(6,040)	(4,424)
Free cash flow	<u>\$ 8,563</u>	<u>\$ 5,399</u>
Net cash provided by (used in) investing activities	<u>\$ (7,552)</u>	<u>\$ (7,065)</u>
Net cash provided by (used in) financing activities	<u>\$ (4,345)</u>	<u>\$ 3,136</u>

[Table of Contents](#)*Free Cash Flow Less Lease Principal Repayments*

Free cash flow less lease principal repayments is free cash flow reduced by “Principal repayments of capital lease obligations,” and “Principal repayments of finance lease obligations,” which are included in cash flow from financing activities. Free cash flow less lease principal repayments approximates the actual payments of cash for our capital and finance leases. The following is a reconciliation of free cash flow less lease principal repayments to the most comparable GAAP cash flow measure, “Net cash provided by (used in) operating activities,” for the trailing twelve months ended September 30, 2016 and 2015 (in millions):

	Twelve Months Ended September 30,	
	2016	2015
Net cash provided by (used in) operating activities	\$ 14,603	\$ 9,823
Purchases of property and equipment, including internal-use software and website development, net	(6,040)	(4,424)
Principal repayments of capital lease obligations	(3,579)	(2,144)
Principal repayments of finance lease obligations	(131)	(163)
Free cash flow less lease principal repayments	<u>\$ 4,853</u>	<u>\$ 3,092</u>
Net cash provided by (used in) investing activities	<u>\$ (7,552)</u>	<u>\$ (7,065)</u>
Net cash provided by (used in) financing activities	<u>\$ (4,345)</u>	<u>\$ 3,136</u>

Free Cash Flow Less Finance Lease Principal Repayments and Assets Acquired Under Capital Leases

Free cash flow less finance lease principal repayments and assets acquired under capital leases is free cash flow reduced by “Principal repayments of finance lease obligations,” which are included in cash flow from financing activities, and property and equipment acquired under capital leases. In this measure, property and equipment acquired under capital leases is reflected as if these assets had been purchased with cash, which is not the case as these assets have been leased. The following is a reconciliation of free cash flow less finance lease principal repayments and assets acquired under capital leases to the most comparable GAAP cash flow measure, “Net cash provided by (used in) operating activities,” for the trailing twelve months ended September 30, 2016 and 2015 (in millions):

	Twelve Months Ended September 30,	
	2016	2015
Net cash provided by (used in) operating activities	\$ 14,603	\$ 9,823
Purchases of property and equipment, including internal-use software and website development, net	(6,040)	(4,424)
Property and equipment acquired under capital leases	(4,998)	(4,599)
Principal repayments of finance lease obligations	(131)	(163)
Free cash flow less finance lease principal repayments and assets acquired under capital leases	<u>\$ 3,434</u>	<u>\$ 637</u>
Net cash provided by (used in) investing activities	<u>\$ (7,552)</u>	<u>\$ (7,065)</u>
Net cash provided by (used in) financing activities	<u>\$ (4,345)</u>	<u>\$ 3,136</u>

All of these free cash flows measures have limitations as they omit certain components of the overall cash flow statement and do not represent the residual cash flow available for discretionary expenditures. For example, these measures of free cash flows do not incorporate the portion of payments representing principal reductions of debt or cash payments for business acquisitions. Additionally, our mix of property and equipment acquisitions with cash or other financing options may change over time. Therefore, we believe it is important to view free cash flows measures only as a complement to our entire consolidated statements of cash flows.

[Table of Contents](#)*Effect of Foreign Exchange Rates*

Information regarding the effect of foreign exchange rates, versus the U.S. Dollar, on our net sales, operating expenses, and operating income is provided to show reported period operating results had the foreign exchange rates remained the same as those in effect in the comparable prior year periods.

Guidance

We provided guidance on October 27, 2016, in our earnings release furnished on Form 8-K as set forth below. These forward-looking statements reflect Amazon.com's expectations as of October 27, 2016, and are subject to substantial uncertainty. Our results are inherently unpredictable and may be materially affected by many factors, such as fluctuations in foreign exchange rates, changes in global economic conditions and customer spending, world events, the rate of growth of the Internet, online commerce, and cloud services, as well as those outlined in Item 1A of Part II, "Risk Factors."

Fourth Quarter 2016 Guidance

- Net sales are expected to be between \$42.0 billion and \$45.5 billion, or to grow between 17% and 27% compared with fourth quarter 2015. This guidance anticipates approximately 60 basis points of favorable impact from foreign exchange rates.
- Operating income is expected to be between \$0 and \$1.25 billion, compared with \$1.1 billion in fourth quarter 2015.
- This guidance assumes, among other things, that no additional business acquisitions, investments, restructurings, or legal settlements are concluded.

[Table of Contents](#)**Item 3. Quantitative and Qualitative Disclosures About Market Risk**

We are exposed to market risk for the effect of interest rate changes, foreign currency fluctuations, and changes in the market values of our investments. Information relating to quantitative and qualitative disclosures about market risk is set forth below and in Item 2 of Part I, “Management’s Discussion and Analysis of Financial Condition and Results of Operations — Liquidity and Capital Resources.”

Interest Rate Risk

Our exposure to market risk for changes in interest rates relates primarily to our investment portfolio and our long-term debt. Our long-term debt is carried at amortized cost and fluctuations in interest rates do not impact our consolidated financial statements. However, the fair value of our debt, which pays interest at a fixed rate, will generally fluctuate with movements of interest rates, increasing in periods of declining rates of interest and declining in periods of increasing rates of interest. All of our cash equivalent and marketable fixed income securities are designated as available-for-sale and, accordingly, are presented at fair value on our consolidated balance sheets. We generally invest our excess cash in investment grade short- to intermediate-term fixed income securities and AAA-rated money market funds. Fixed income securities may have their fair market value adversely affected due to a rise in interest rates, and we may suffer losses in principal if forced to sell securities that have declined in market value due to changes in interest rates.

Foreign Exchange Risk

During Q3 2016, net sales from our International segment accounted for 32% of our consolidated revenues. Net sales and related expenses generated from our internationally-focused websites, and from [www.amazon.ca](#) and [www.amazon.com.mx](#) (which are included in our North America segment), are primarily denominated in the functional currencies of the corresponding websites and primarily include Euros, Japanese Yen, and British Pounds. The results of operations of, and certain of our intercompany balances associated with, our internationally-focused websites and AWS are exposed to foreign exchange rate fluctuations. Upon consolidation, as foreign exchange rates vary, net sales and other operating results may differ materially from expectations, and we may record significant gains or losses on the remeasurement of intercompany balances. For example, as a result of fluctuations in foreign exchange rates throughout the period compared to rates in effect the prior year, International segment revenues in Q3 2016 increased by \$54 million in comparison with Q3 2015.

We have foreign exchange risk related to foreign-denominated cash, cash equivalents, and marketable securities (“foreign funds”). Based on the balance of foreign funds as of September 30, 2016, of \$5.9 billion, an assumed 5%, 10%, and 20% adverse change to foreign exchange would result in fair value declines of \$295 million, \$590 million, and \$1.2 billion. All investments are classified as “available-for-sale.” Fluctuations in fair value are recorded in “Accumulated other comprehensive loss,” a separate component of stockholders’ equity.

We have foreign exchange risk related to our intercompany balances denominated in various foreign currencies. Based on the intercompany balances as of September 30, 2016, an assumed 5%, 10%, and 20% adverse change to foreign exchange would result in losses of \$235 million, \$500 million, and \$1.1 billion, recorded to “Other income (expense), net.”

See Item 2 of Part I, “Management’s Discussion and Analysis of Financial Condition and Results of Operations — Results of Operations — Effect of Foreign Exchange Rates” for additional information on the effect on reported results of changes in foreign exchange rates.

Investment Risk

As of September 30, 2016, our recorded basis in equity investments was \$450 million. These investments primarily relate to equity warrants and other investments in public and private companies. We review our investments for impairment when events and circumstances indicate that the decline in fair value of such assets below the carrying value is other-than-temporary. Our analysis includes a review of recent operating results and trends, recent sales/acquisitions of the investee securities, and other publicly available data. The current global economic climate provides additional uncertainty. Valuations of private companies are inherently more complex due to the lack of readily available market data. As such, we believe that market sensitivities are not practicable.

[Table of Contents](#)**Item 4. Controls and Procedures**

We carried out an evaluation required by the Securities Exchange Act of 1934 (the “1934 Act”), under the supervision and with the participation of our principal executive officer and principal financial officer, of the effectiveness of the design and operation of our disclosure controls and procedures, as defined in Rule 13a-15(e) of the 1934 Act, as of the end of the period covered by this report. Based on this evaluation, our principal executive officer and principal financial officer concluded that our disclosure controls and procedures were effective to provide reasonable assurance that information required to be disclosed by us in the reports that we file or submit under the 1934 Act is recorded, processed, summarized, and reported within the time periods specified in the SEC’s rules and forms and to provide reasonable assurance that such information is accumulated and communicated to our management, including our principal executive officer and principal financial officer, as appropriate to allow timely decisions regarding required disclosure.

During the most recent fiscal quarter, there has not occurred any change in our internal control over financial reporting that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

Our disclosure controls and procedures are designed to provide reasonable assurance of achieving their objectives as specified above. Management does not expect, however, that our disclosure controls and procedures will prevent or detect all error and fraud. Any control system, no matter how well designed and operated, is based upon certain assumptions and can provide only reasonable, not absolute, assurance that its objectives will be met. Further, no evaluation of controls can provide absolute assurance that misstatements due to error or fraud will not occur or that all control issues and instances of fraud, if any, within the Company have been detected.

[Table of Contents](#)**PART II. OTHER INFORMATION****Item 1. Legal Proceedings**

See Item 1 of Part I, “Financial Statements — Note 3 — Commitments and Contingencies — Legal Proceedings.”

Item 1A. Risk Factors

Please carefully consider the following risk factors. If any of the following risks occur, our business, financial condition, operating results, and cash flows could be materially adversely affected. In addition, the current global economic climate amplifies many of these risks.

We Face Intense Competition

Our businesses are rapidly evolving and intensely competitive, and we have many competitors in different industries, including retail, e-commerce services, digital content and electronic devices, and web and infrastructure computing services. Some of our current and potential competitors have greater resources, longer histories, more customers, and/or greater brand recognition. They may secure better terms from vendors, adopt more aggressive pricing, and devote more resources to technology, infrastructure, fulfillment, and marketing.

Competition may intensify as our competitors enter into business combinations or alliances and established companies in other market segments expand to become competitive with our business. In addition, new and enhanced technologies, including search, web and infrastructure computing services, digital content, and electronic devices, may increase our competition. The Internet facilitates competitive entry and comparison shopping, and increased competition may reduce our sales and profits.

Our Expansion Places a Significant Strain on our Management, Operational, Financial, and Other Resources

We are rapidly and significantly expanding our global operations, including increasing our product and service offerings and scaling our infrastructure to support our retail and services businesses. This expansion increases the complexity of our business and places significant strain on our management, personnel, operations, systems, technical performance, financial resources, and internal financial control and reporting functions. We may not be able to manage growth effectively, which could damage our reputation, limit our growth, and negatively affect our operating results.

Our Expansion into New Products, Services, Technologies, and Geographic Regions Subjects Us to Additional Business, Legal, Financial, and Competitive Risks

We may have limited or no experience in our newer market segments, and our customers may not adopt our new offerings. These offerings may present new and difficult technology challenges, and we may be subject to claims if customers of these offerings experience service disruptions or failures or other quality issues. In addition, profitability, if any, in our newer activities may be lower than in our older activities, and we may not be successful enough in these newer activities to recoup our investments in them. If any of this were to occur, it could damage our reputation, limit our growth, and negatively affect our operating results.

We May Experience Significant Fluctuations in Our Operating Results and Growth Rate

We may not be able to accurately forecast our growth rate. We base our expense levels and investment plans on sales estimates. A significant portion of our expenses and investments is fixed, and we may not be able to adjust our spending quickly enough if our sales are less than expected.

Our revenue growth may not be sustainable, and our percentage growth rates may decrease. Our revenue and operating profit growth depends on the continued growth of demand for the products and services offered by us or our sellers, and our business is affected by general economic and business conditions worldwide. A softening of demand, whether caused by changes in customer preferences or a weakening of the U.S. or global economies, may result in decreased revenue or growth.

Our sales and operating results will also fluctuate for many other reasons, including due to risks described elsewhere in this section and the following:

- our ability to retain and increase sales to existing customers, attract new customers, and satisfy our customers’ demands;
- our ability to retain and expand our network of sellers;

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- our ability to offer products on favorable terms, manage inventory, and fulfill orders;
- the introduction of competitive websites, products, services, price decreases, or improvements;
- changes in usage or adoption rates of the Internet, e-commerce, electronic devices, and web services, including outside the U.S.;
- timing, effectiveness, and costs of expansion and upgrades of our systems and infrastructure;
- the success of our geographic, service, and product line expansions;
- the extent to which we finance, and the terms of any such financing for, our current operations and future growth;
- the outcomes of legal proceedings and claims, which may include significant monetary damages or injunctive relief and could have a material adverse impact on our operating results;
- variations in the mix of products and services we sell;
- variations in our level of merchandise and vendor returns;
- the extent to which we offer free shipping, continue to reduce prices worldwide, and provide additional benefits to our customers;
- the extent to which we invest in technology and content, fulfillment, and other expense categories;
- increases in the prices of fuel and gasoline, as well as increases in the prices of other energy products and commodities like paper and packing supplies;
- the extent to which our equity-method investees record significant operating and non-operating items;
- the extent to which operators of the networks between our customers and our websites successfully charge fees to grant our customers unimpaired and unconstrained access to our online services;
- our ability to collect amounts owed to us when they become due;
- the extent to which use of our services is affected by spyware, viruses, phishing and other spam emails, denial of service attacks, data theft, computer intrusions, outages, and similar events; and
- terrorist attacks and armed hostilities.

Our International Operations Expose Us to a Number of Risks

Our international activities are significant to our revenues and profits, and we plan to further expand internationally. In certain international market segments, we have relatively little operating experience and may not benefit from any first-to-market advantages or otherwise succeed. It is costly to establish, develop, and maintain international operations and websites, and promote our brand internationally. Our international operations may not be profitable on a sustained basis.

In addition to risks described elsewhere in this section, our international sales and operations are subject to a number of risks, including:

- local economic and political conditions;
- government regulation of e-commerce and other services, electronic devices, and competition, and restrictive governmental actions (such as trade protection measures, including export duties and quotas and custom duties and tariffs), nationalization, and restrictions on foreign ownership;
- restrictions on sales or distribution of certain products or services and uncertainty regarding liability for products, services, and content, including uncertainty as a result of less Internet-friendly legal systems, local laws, lack of legal precedent, and varying rules, regulations, and practices regarding the physical and digital distribution of media products and enforcement of intellectual property rights;
- business licensing or certification requirements, such as for imports, exports, web services, and electronic devices;
- limitations on the repatriation and investment of funds and foreign currency exchange restrictions;
- limited fulfillment and technology infrastructure;
- shorter payable and longer receivable cycles and the resultant negative impact on cash flow;
- laws and regulations regarding consumer and data protection, privacy, network security, encryption, payments, and restrictions on pricing or discounts;
- lower levels of use of the Internet;
- lower levels of consumer spending and fewer opportunities for growth compared to the U.S.;

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- lower levels of credit card usage and increased payment risk;
- difficulty in staffing, developing, and managing foreign operations as a result of distance, language, and cultural differences;
- different employee/employer relationships and the existence of works councils and labor unions;
- compliance with the U.S. Foreign Corrupt Practices Act and other applicable U.S. and foreign laws prohibiting corrupt payments to government officials and other third parties;
- laws and policies of the U.S. and other jurisdictions affecting trade, foreign investment, loans, and taxes; and
- geopolitical events, including war and terrorism.

As international e-commerce and other online and web services grow, competition will intensify. Local companies may have a substantial competitive advantage because of their greater understanding of, and focus on, the local customer, as well as their more established local brand names. We may not be able to hire, train, retain, and manage required personnel, which may limit our international growth.

The People's Republic of China ("PRC") and India regulate Amazon's and its affiliates' businesses and operations in country through regulations and license requirements that may restrict (i) foreign investment in and operation of the Internet, IT infrastructure, data centers, retail, delivery, and other sectors, (ii) Internet content, and (iii) the sale of media and other products and services. For example, in order to meet local ownership and regulatory licensing requirements, www.amazon.cn is operated by PRC companies that are indirectly owned, either wholly or partially, by PRC nationals. In addition, we provide certain technology services in China in conjunction with third parties that hold PRC licenses to provide services. In India, the government restricts the ownership or control of Indian companies by foreign entities involved in online multi-brand retail trading activities. For www.amazon.in, we provide certain marketing tools and logistics services to third party sellers to enable them to sell online and deliver to customers, and we hold an indirect minority interest in an entity that is a third-party seller on the www.amazon.in marketplace. Although we believe these structures and activities comply with existing laws, they involve unique risks, and the PRC is actively considering changes in its foreign investment rules that could impact these structures and activities. There are substantial uncertainties regarding the interpretation of PRC and Indian laws and regulations, and it is possible that these governments will ultimately take a view contrary to ours. In addition, our Chinese and Indian businesses and operations may be unable to continue to operate if we or our affiliates are unable to access sufficient funding or in China enforce contractual relationships with respect to management and control of such businesses. If our international activities were found to be in violation of any existing or future PRC, Indian or other laws or regulations or if interpretations of those laws and regulations were to change, our businesses in those countries could be subject to fines and other financial penalties, have licenses revoked, or be forced to shut down entirely.

If We Do Not Successfully Optimize and Operate Our Fulfillment Network and Data Centers, Our Business Could Be Harmed

If we do not adequately predict customer demand or otherwise optimize and operate our fulfillment network and data centers successfully, it could result in excess or insufficient fulfillment or data center capacity, or result in increased costs, impairment charges, or both, or harm our business in other ways. As we continue to add fulfillment and data center capability or add new businesses with different requirements, our fulfillment and data center networks become increasingly complex and operating them becomes more challenging. There can be no assurance that we will be able to operate our networks effectively.

In addition, a failure to optimize inventory in our fulfillment network will increase our net shipping cost by requiring long-zone or partial shipments. We and our co-sourcers may be unable to adequately staff our fulfillment network and customer service centers. If the other businesses on whose behalf we perform inventory fulfillment services deliver product to our fulfillment centers in excess of forecasts, we may be unable to secure sufficient storage space and may be unable to optimize our fulfillment network.

We rely on a limited number of shipping companies to deliver inventory to us and completed orders to our customers. If we are not able to negotiate acceptable terms with these companies or they experience performance problems or other difficulties, it could negatively impact our operating results and customer experience. In addition, our ability to receive inbound inventory efficiently and ship completed orders to customers also may be negatively affected by inclement weather, fire, flood, power loss, earthquakes, labor disputes, acts of war or terrorism, acts of God, and similar factors.

Under some of our commercial agreements, we maintain the inventory of other companies, thereby increasing the complexity of tracking inventory and operating our fulfillment network. Our failure to properly handle such inventory or the inability of these other companies to accurately forecast product demand would result in unexpected costs and other harm to our business and reputation.

[Table of Contents](#)***The Seasonality of Our Business Places Increased Strain on Our Operations***

We expect a disproportionate amount of our net sales to occur during our fourth quarter. If we do not stock or restock popular products in sufficient amounts such that we fail to meet customer demand, it could significantly affect our revenue and our future growth. If we overstock products, we may be required to take significant inventory markdowns or write-offs and incur commitment costs, which could reduce profitability. We may experience an increase in our net shipping cost due to complimentary upgrades, split-shipments, and additional long-zone shipments necessary to ensure timely delivery for the holiday season. If too many customers access our websites within a short period of time due to increased holiday demand, we may experience system interruptions that make our websites unavailable or prevent us from efficiently fulfilling orders, which may reduce the volume of goods we sell and the attractiveness of our products and services. In addition, we may be unable to adequately staff our fulfillment network and customer service centers during these peak periods and delivery and other fulfillment companies and customer service co-sourcers may be unable to meet the seasonal demand. We also face risks described elsewhere in this Item 1A relating to fulfillment network optimization and inventory.

We generally have payment terms with our retail vendors that extend beyond the amount of time necessary to collect proceeds from our consumer customers. As a result of holiday sales, as of December 31 of each year, our cash, cash equivalents, and marketable securities balances typically reach their highest level (other than as a result of cash flows provided by or used in investing and financing activities). This operating cycle results in a corresponding increase in accounts payable as of December 31. Our accounts payable balance generally declines during the first three months of the year, resulting in a corresponding decline in our cash, cash equivalents, and marketable securities balances.

Our Business Could Suffer if We Are Unsuccessful in Making, Integrating, and Maintaining Commercial Agreements, Strategic Alliances, and Other Business Relationships

We provide e-commerce and other services to businesses through commercial agreements, strategic alliances, and business relationships. Under these agreements, we provide web services, technology, fulfillment, computing, digital storage, and other services, as well as enable sellers to offer products or services through our websites. These arrangements are complex and require substantial infrastructure capacity, personnel, and other resource commitments, which may limit the amount of business we can service. We may not be able to implement, maintain, and develop the components of these commercial relationships, which may include web services, fulfillment, customer service, inventory management, tax collection, payment processing, hardware, content, and third-party software, and engaging third parties to perform services. The amount of compensation we receive under certain of our commercial agreements is partially dependent on the volume of the other company's sales. Therefore, if the other company's offering is not successful, the compensation we receive may be lower than expected or the agreement may be terminated. Moreover, we may not be able to enter into additional commercial relationships and strategic alliances on favorable terms. We also may be subject to claims from businesses to which we provide these services if we are unsuccessful in implementing, maintaining, or developing these services.

As our agreements terminate, we may be unable to renew or replace these agreements on comparable terms, or at all. We may in the future enter into amendments on less favorable terms or encounter parties that have difficulty meeting their contractual obligations to us, which could adversely affect our operating results.

Our present and future e-commerce services agreements, other commercial agreements, and strategic alliances create additional risks such as:

- disruption of our ongoing business, including loss of management focus on existing businesses;
- impairment of other relationships;
- variability in revenue and income from entering into, amending, or terminating such agreements or relationships; and
- difficulty integrating under the commercial agreements.

Our Business Could Suffer if We Are Unsuccessful in Making, Integrating, and Maintaining Acquisitions and Investments

We have acquired and invested in a number of companies, and we may acquire or invest in or enter into joint ventures with additional companies. These transactions create risks such as:

- disruption of our ongoing business, including loss of management focus on existing businesses;
- problems retaining key personnel;
- additional operating losses and expenses of the businesses we acquired or in which we invested;
- the potential impairment of tangible and intangible assets and goodwill, including as a result of acquisitions;

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- the potential impairment of customer and other relationships of the company we acquired or in which we invested or our own customers as a result of any integration of operations;
- the difficulty of incorporating acquired technology and rights into our offerings and unanticipated expenses related to such integration;
- the difficulty of integrating a new company's accounting, financial reporting, management, information and information security, human resource, and other administrative systems to permit effective management, and the lack of control if such integration is delayed or not implemented;
- for investments in which an investee's financial performance is incorporated into our financial results, either in full or in part, the dependence on the investee's accounting, financial reporting, and similar systems, controls, and processes;
- the difficulty of implementing at companies we acquire the controls, procedures, and policies appropriate for a larger public company;
- potential unknown liabilities associated with a company we acquire or in which we invest; and
- for foreign transactions, additional risks related to the integration of operations across different cultures and languages, and the economic, political, and regulatory risks associated with specific countries.

As a result of future acquisitions or mergers, we might need to issue additional equity securities, spend our cash, or incur debt, contingent liabilities, or amortization expenses related to intangible assets, any of which could reduce our profitability and harm our business. In addition, valuations supporting our acquisitions and strategic investments could change rapidly given the current global economic climate. We could determine that such valuations have experienced impairments or other-than-temporary declines in fair value which could adversely impact our financial results.

We Have Foreign Exchange Risk

The results of operations of, and certain of our intercompany balances associated with, our international websites and product and service offerings are exposed to foreign exchange rate fluctuations. Upon translation, operating results may differ materially from expectations, and we may record significant gains or losses on the remeasurement of intercompany balances. As we have expanded our international operations, our exposure to exchange rate fluctuations has increased. We also hold cash equivalents and/or marketable securities in foreign currencies including British Pounds, Chinese Yuan, Euros, and Japanese Yen. If the U.S. Dollar strengthens compared to these currencies, cash equivalents, and marketable securities balances, when translated, may be materially less than expected and vice versa.

The Loss of Key Senior Management Personnel Could Negatively Affect Our Business

We depend on our senior management and other key personnel, particularly Jeffrey P. Bezos, our President, CEO, and Chairman. We do not have "key person" life insurance policies. The loss of any of our executive officers or other key employees could harm our business.

We Could Be Harmed by Data Loss or Other Security Breaches

As a result of our services being web-based and the fact that we process, store, and transmit large amounts of data, including personal information, for our customers, failure to prevent or mitigate data loss or other security breaches, including breaches of our vendors' technology and systems, could expose us or our customers to a risk of loss or misuse of such information, adversely affect our operating results, result in litigation or potential liability for us, and otherwise harm our business. We use third party technology and systems for a variety of reasons, including, without limitation, encryption and authentication technology, employee email, content delivery to customers, back-office support, and other functions. Some subsidiaries had past security breaches, and, although they did not have a material adverse effect on our operating results, there can be no assurance of a similar result in the future. Although we have developed systems and processes that are designed to protect customer information and prevent data loss and other security breaches, including systems and processes designed to reduce the impact of a security breach at a third party vendor, such measures cannot provide absolute security.

We Face Risks Related to System Interruption and Lack of Redundancy

We experience occasional system interruptions and delays that make our websites and services unavailable or slow to respond and prevent us from efficiently fulfilling orders or providing services to third parties, which may reduce our net sales and the attractiveness of our products and services. If we are unable to continually add software and hardware, effectively upgrade our systems and network infrastructure, and take other steps to improve the efficiency of our systems, it could cause system interruptions or delays and adversely affect our operating results.

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Our computer and communications systems and operations could be damaged or interrupted by fire, flood, power loss, telecommunications failure, earthquakes, acts of war or terrorism, acts of God, computer viruses, physical or electronic break-ins, and similar events or disruptions. Any of these events could cause system interruption, delays, and loss of critical data, and could prevent us from accepting and fulfilling customer orders and providing services, which could make our product and service offerings less attractive and subject us to liability. Our systems are not fully redundant and our disaster recovery planning may not be sufficient. In addition, we may have inadequate insurance coverage to compensate for any related losses. Any of these events could damage our reputation and be expensive to remedy.

We Face Significant Inventory Risk

In addition to risks described elsewhere in this Item 1A relating to fulfillment network and inventory optimization by us and third parties, we are exposed to significant inventory risks that may adversely affect our operating results as a result of seasonality, new product launches, rapid changes in product cycles and pricing, defective merchandise, changes in consumer demand and consumer spending patterns, changes in consumer tastes with respect to our products, and other factors. We endeavor to accurately predict these trends and avoid overstocking or understocking products we manufacture and/or sell. Demand for products, however, can change significantly between the time inventory or components are ordered and the date of sale. In addition, when we begin selling or manufacturing a new product, it may be difficult to establish vendor relationships, determine appropriate product or component selection, and accurately forecast demand. The acquisition of certain types of inventory or components may require significant lead-time and prepayment and they may not be returnable. We carry a broad selection and significant inventory levels of certain products, such as consumer electronics, and we may be unable to sell products in sufficient quantities or during the relevant selling seasons. Any one of the inventory risk factors set forth above may adversely affect our operating results.

We May Not Be Able to Adequately Protect Our Intellectual Property Rights or May Be Accused of Infringing Intellectual Property Rights of Third Parties

We regard our trademarks, service marks, copyrights, patents, trade dress, trade secrets, proprietary technology, and similar intellectual property as critical to our success, and we rely on trademark, copyright, and patent law, trade secret protection, and confidentiality and/or license agreements with our employees, customers, and others to protect our proprietary rights. Effective intellectual property protection may not be available in every country in which our products and services are made available. We also may not be able to acquire or maintain appropriate domain names in all countries in which we do business. Furthermore, regulations governing domain names may not protect our trademarks and similar proprietary rights. We may be unable to prevent third parties from acquiring domain names that are similar to, infringe upon, or diminish the value of our trademarks and other proprietary rights.

We may not be able to discover or determine the extent of any unauthorized use of our proprietary rights. Third parties that license our proprietary rights also may take actions that diminish the value of our proprietary rights or reputation. The protection of our intellectual property may require the expenditure of significant financial and managerial resources. Moreover, the steps we take to protect our intellectual property may not adequately protect our rights or prevent third parties from infringing or misappropriating our proprietary rights. We also cannot be certain that others will not independently develop or otherwise acquire equivalent or superior technology or other intellectual property rights.

Other parties also may claim that we infringe their proprietary rights. We have been subject to, and expect to continue to be subject to, claims and legal proceedings regarding alleged infringement by us of the intellectual property rights of third parties. Such claims, whether or not meritorious, may result in the expenditure of significant financial and managerial resources, injunctions against us, or the payment of damages, including to satisfy indemnification obligations. We may need to obtain licenses from third parties who allege that we have infringed their rights, but such licenses may not be available on terms acceptable to us or at all. In addition, we may not be able to obtain or utilize on terms that are favorable to us, or at all, licenses or other rights with respect to intellectual property we do not own. These risks have been amplified by the increase in third parties whose sole or primary business is to assert such claims.

Our digital content offerings depend in part on effective digital rights management technology to control access to digital content. If the digital rights management technology that we use is compromised or otherwise malfunctions, we could be subject to claims, and content providers may be unwilling to include their content in our service.

We Have a Rapidly Evolving Business Model and Our Stock Price Is Highly Volatile

We have a rapidly evolving business model. The trading price of our common stock fluctuates significantly in response to, among other risks, the risks described elsewhere in this Item 1A, as well as:

- changes in interest rates;
- conditions or trends in the Internet and the industry segments we operate in;

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- quarterly variations in operating results;
- fluctuations in the stock market in general and market prices for Internet-related companies in particular;
- changes in financial estimates by us or securities analysts and recommendations by securities analysts;
- changes in our capital structure, including issuance of additional debt or equity to the public;
- changes in the valuation methodology of, or performance by, other e-commerce or technology companies; and
- transactions in our common stock by major investors and certain analyst reports, news, and speculation.

Volatility in our stock price could adversely affect our business and financing opportunities and force us to increase our cash compensation to employees or grant larger stock awards than we have historically, which could hurt our operating results or reduce the percentage ownership of our existing stockholders, or both.

Government Regulation Is Evolving and Unfavorable Changes Could Harm Our Business

We are subject to general business regulations and laws, as well as regulations and laws specifically governing the Internet, e-commerce, electronic devices, and other services. Existing and future laws and regulations may impede our growth. These regulations and laws may cover taxation, privacy, data protection, pricing, content, copyrights, distribution, mobile communications, electronic device certification, electronic waste, energy consumption, environmental regulation, electronic contracts and other communications, competition, consumer protection, web services, the provision of online payment services, information reporting requirements, unencumbered Internet access to our services or access to our facilities, the design and operation of websites, the characteristics and quality of products and services, and the commercial operation of unmanned aircraft systems. It is not clear how existing laws governing issues such as property ownership, libel, and personal privacy apply to the Internet, e-commerce, digital content, and web services. Jurisdictions may regulate consumer-to-consumer online businesses, including certain aspects of our seller programs. Unfavorable regulations and laws could diminish the demand for our products and services and increase our cost of doing business.

We Could Be Subject to Additional Sales Tax or Other Indirect Tax Liabilities

U.S. Supreme Court decisions restrict the imposition of obligations to collect state and local sales taxes with respect to remote sales in the U.S. However, an increasing number of states, and certain foreign jurisdictions, have considered or adopted laws or administrative practices that attempt to impose obligations on remote sellers and online marketplaces to collect taxes on their behalf. We support a Federal law that would allow states to require sales tax collection by remote sellers under a nationwide system. More than half of our revenue is already earned in jurisdictions where we collect sales tax or its equivalent. A successful assertion by one or more states or foreign countries requiring us to collect taxes where we do not do so could result in substantial tax liabilities, including for past sales, as well as penalties and interest. In addition, if the tax authorities in jurisdictions where we already collect sales tax or other indirect taxes were successfully to challenge our positions, our tax liability could increase substantially.

We Could Be Subject to Additional Income Tax Liabilities

We are subject to income taxes in the U.S. (federal and state) and numerous foreign jurisdictions. Tax laws, regulations, and administrative practices in various jurisdictions may be subject to significant change due to economic, political, and other conditions, and significant judgment is required in evaluating and estimating our provision and accruals for these taxes. There are many transactions that occur during the ordinary course of business for which the ultimate tax determination is uncertain. Our effective tax rates could be affected by earnings being lower than anticipated in jurisdictions where we have lower statutory rates and higher than anticipated in jurisdictions where we have higher statutory rates, losses incurred in jurisdictions for which we are not able to realize the related tax benefit, changes in foreign currency exchange rates, entry into new businesses and geographies and changes to our existing businesses, acquisitions (including integrations) and investments, changes in our deferred tax assets and liabilities and their valuation, and changes in the relevant tax, accounting, and other laws, regulations, administrative practices, principles, and interpretations, including fundamental changes to the tax laws applicable to corporate multinationals. The U.S., the European Union and its member states, and a number of other countries are actively pursuing changes in this regard.

Except as required under U.S. tax laws, we do not provide for U.S. taxes on our undistributed earnings of foreign subsidiaries that have not been previously taxed since we intend to invest such undistributed earnings indefinitely outside of the U.S. If our intent changes or if these funds are needed for our U.S. operations, we would be required to accrue or pay U.S. taxes on some or all of these undistributed earnings and our effective tax rate would be adversely affected. We are also currently subject to audit in various jurisdictions, and these jurisdictions may assess additional income tax liabilities against us. Developments in an audit, litigation, or the relevant laws, regulations, administrative practices, principles, and interpretations could have a material effect on our operating results or cash flows in the period or periods for which that development occurs,

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as well as for prior and subsequent periods. For instance, the IRS is seeking to increase our U.S. taxable income related to transfer pricing with our foreign subsidiaries for transactions undertaken in 2005 and 2006, and we are currently contesting the matter in U.S. Tax Court. In addition to the risk of additional tax for 2005 and 2006 transactions, if this litigation is adversely determined or if the IRS were to seek transfer pricing adjustments of a similar nature for transactions in subsequent years, we could be subject to significant additional tax liabilities. In addition, in October 2014, the European Commission opened a formal investigation to examine whether decisions by the tax authorities in Luxembourg with regard to the corporate income tax paid by certain of our subsidiaries comply with European Union rules on state aid. If this matter is adversely resolved, Luxembourg may be required to assess, and we may be required to pay, additional amounts with respect to current and prior periods and our taxes in the future could increase. Although we believe our tax estimates are reasonable, the final outcome of tax audits, investigations, and any related litigation could be materially different from our historical income tax provisions and accruals.

Our Supplier Relationships Subject Us to a Number of Risks

We have significant suppliers, including licensors, and in some cases, limited or single-sources of supply, that are important to our sourcing, services, manufacturing, and any related ongoing servicing of merchandise and content. We do not have long-term arrangements with most of our suppliers to guarantee availability of merchandise, content, components, or services, particular payment terms, or the extension of credit limits. If our current suppliers were to stop selling or licensing merchandise, content, components, or services to us on acceptable terms, or delay delivery, including as a result of one or more supplier bankruptcies due to poor economic conditions, as a result of natural disasters, or for other reasons, we may be unable to procure alternatives from other suppliers in a timely and efficient manner and on acceptable terms, or at all. In addition, if our suppliers or other vendors violate applicable laws, regulations, our code of standards and responsibilities, or implement practices regarded as unethical, unsafe, or hazardous to the environment, it could damage our reputation, limit our growth, and negatively affect our operating results.

We May Be Subject to Risks Related to Government Contracts and Related Procurement Regulations

Our contracts with U.S., as well as state, local, and foreign, government entities are subject to various procurement regulations and other requirements relating to their formation, administration, and performance. We may be subject to audits and investigations relating to our government contracts, and any violations could result in various civil and criminal penalties and administrative sanctions, including termination of contract, refunding or suspending of payments, forfeiture of profits, payment of fines, and suspension or debarment from future government business. In addition, such contracts may provide for termination by the government at any time, without cause.

We May Be Subject to Product Liability Claims if People or Property Are Harmed by the Products We Sell

Some of the products we sell or manufacture may expose us to product liability claims relating to personal injury, death, or environmental or property damage, and may require product recalls or other actions. Certain third parties also sell products using our e-commerce services that may increase our exposure to product liability claims, such as if these sellers do not have sufficient protection from such claims. Although we maintain liability insurance, we cannot be certain that our coverage will be adequate for liabilities actually incurred or that insurance will continue to be available to us on economically reasonable terms, or at all. In addition, some of our agreements with our vendors and sellers do not indemnify us from product liability.

We Are Subject to Payments-Related Risks

We accept payments using a variety of methods, including credit card, debit card, credit accounts (including promotional financing), gift cards, direct debit from a customer's bank account, consumer invoicing, physical bank check, and payment upon delivery. For existing and future payment options we offer to our customers, we may become subject to additional regulations and compliance requirements (including obligations to implement enhanced authentication processes that could result in significant costs and reduce the ease of use of our payments products), as well as fraud. For certain payment methods, including credit and debit cards, we pay interchange and other fees, which may increase over time and raise our operating costs and lower profitability. We rely on third parties to provide certain Amazon-branded payment methods and payment processing services, including the processing of credit cards, debit cards, electronic checks, and promotional financing. In each case, it could disrupt our business if these companies become unwilling or unable to provide these services to us. We also offer co-branded credit card programs, which could adversely affect our operating results if terminated. We are also subject to payment card association operating rules, including data security rules, certification requirements, and rules governing electronic funds transfers, which could change or be reinterpreted to make it difficult or impossible for us to comply. If we fail to comply with these rules or requirements, or if our data security systems are breached or compromised, we may be liable for card issuing banks' costs, subject to fines and higher transaction fees, and lose our ability to accept credit and debit card payments from our customers, process electronic funds transfers, or facilitate other types of online payments, and our business and operating

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results could be adversely affected.

In addition, we provide regulated services in certain jurisdictions because we enable customers to keep account balances with us and transfer money to third parties, and because we provide services to third parties to facilitate payments on their behalf. In these jurisdictions, we may be subject to requirements for licensing, regulatory inspection, bonding and capital maintenance, the use, handling, and segregation of transferred funds, consumer disclosures, and authentication. We are also subject to or voluntarily comply with a number of other laws and regulations relating to payments, money laundering, international money transfers, privacy and information security, and electronic fund transfers. If we were found to be in violation of applicable laws or regulations, we could be subject to additional requirements and civil and criminal penalties, or forced to cease providing certain services.

We Could Be Liable for Fraudulent or Unlawful Activities of Sellers

The law relating to the liability of providers of online payment services is currently unsettled. In addition, governmental agencies could require changes in the way this business is conducted. Under our seller programs, we may be unable to prevent sellers from collecting payments, fraudulently or otherwise, when buyers never receive the products they ordered or when the products received are materially different from the sellers' descriptions. Under our A2Z Guarantee, we reimburse buyers for payments up to certain limits in these situations, and as our marketplace seller sales grow, the cost of this program will increase and could negatively affect our operating results. We also may be unable to prevent sellers on our sites or through other seller sites from selling unlawful goods, selling goods in an unlawful manner, or violating the proprietary rights of others, and could face civil or criminal liability for unlawful activities by our sellers.

[Table of Contents](#)**Item 2. Unregistered Sales of Equity Securities and Use of Proceeds**

None.

Item 3. Defaults Upon Senior Securities

None.

Item 4. Mine Safety Disclosures

Not applicable.

Item 5. Other Information*Disclosure Pursuant to Section 13(r) of the Exchange Act*

We recently determined that, between January 2012 and September 2016, we processed and delivered orders of consumer products for certain individuals and entities located outside Iran covered by the Iran Threat Reduction and Syria Human Rights Act ("ITRA"), in addition to those we have previously disclosed, as follows: consumer products valued at approximately \$13,000 for Iranian embassies and a diplomatic organization located in countries other than Iran; consumer products valued at approximately \$18,100 for individuals who may have been acting for Iranian embassies and a diplomatic organization located in countries other than Iran; consumer products valued at approximately \$115 for two entities owned or controlled by the Iranian government; consumer products valued at approximately \$11,600 for individuals who may have been acting for two entities owned or controlled by the Iranian government; consumer products valued at approximately \$500 for one entity designated under Executive Order 13224; and consumer products valued at approximately \$13,600 for individuals who may have been acting for seven entities designated under Executive Order 13382 or Executive Order 13224, of which four entities are owned or controlled by the Iranian government. The consumer products included books, other media, apparel, home and kitchen, health and beauty, jewelry, office, toys, consumer electronics, software, lawn and patio, and automotive products. We are unable accurately to calculate the net profit attributable to these transactions. We do not plan to continue selling to these accounts in the future. Our review is ongoing and we are enhancing our processes designed to identify transactions associated with individuals and entities covered by the ITRA.

Item 6. Exhibits

See exhibits listed under the Exhibit Index below.

[Table of Contents](#)**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

AMAZON.COM, INC. (REGISTRANT)

By: /s/ Shelley Reynolds

Shelley Reynolds
Vice President, Worldwide Controller
(Principal Accounting Officer)

Dated: October 27, 2016

[Table of Contents](#)**EXHIBIT INDEX**

<u>Exhibit Number</u>	<u>Description</u>
3.1	Restated Certificate of Incorporation of the Company (incorporated by reference to the Company's Quarterly Report on Form 10-Q for the Quarter ended March 31, 2000).
3.2	Amended and Restated Bylaws of the Company (incorporated by reference to the Company's Current Report on Form 8-K, filed February 25, 2016).
31.1	Certification of Jeffrey P. Bezos, Chairman and Chief Executive Officer of Amazon.com, Inc., pursuant to Rule 13a-14(a) under the Securities Exchange Act of 1934.
31.2	Certification of Brian T. Olsavsky, Senior Vice President and Chief Financial Officer of Amazon.com, Inc., pursuant to Rule 13a-14(a) under the Securities Exchange Act of 1934.
32.1	Certification of Jeffrey P. Bezos, Chairman and Chief Executive Officer of Amazon.com, Inc., pursuant to 18 U.S.C. Section 1350.
32.2	Certification of Brian T. Olsavsky, Senior Vice President and Chief Financial Officer of Amazon.com, Inc., pursuant to 18 U.S.C. Section 1350.
101	The following financial statements from the Company's Quarterly Report on Form 10-Q for the quarter ended September 30, 2016, formatted in XBRL: (i) Consolidated Statements of Cash Flows, (ii) Consolidated Statements of Operations, (iii) Consolidated Statements of Comprehensive Income (Loss), (iv) Consolidated Balance Sheets, and (v) Notes to Consolidated Financial Statements, tagged as blocks of text and including detailed tags.

EXHIBIT 11

[Seller Central Help](#)[Close Window](#)

Tax Policies

As between the parties, you will be responsible for the collection and payment of any and all of your taxes. Any and all fees payable by you pursuant to this Agreement are exclusive of all sales, use, and similar taxes, and you will pay any taxes that are imposed and payable on such amounts. Except as otherwise provided in this Agreement, you agree that Amazon is not obligated to determine whether taxes apply, and Amazon is not responsible to collect, report, or remit any taxes arising from any transaction. However, if a taxing authority requires us to pay any of your taxes, you will promptly reimburse us for the amounts paid. If the product is shipped from outside your elected country, the recipient of the product may be required to pay, upon delivery, an amount related to assessed sales, goods and services, use, excise, import, value added, or other taxes or duties. Such taxes or duties, if any, are in addition to the sales proceeds collected by Amazon.

EXHIBIT 12

State of South Carolina
Department of Revenue
300A Outlet Pointe Blvd, P. O. Box 12265, Columbia, South Carolina 29211
Website Address: www.sctax.org

SC REVENUE RULING #14-4

SUBJECT: Nexus Creating Activities for Sales and Use Taxes
(Sales and Use Tax)

EFFECTIVE DATE: Applies to all open periods under the statute, unless otherwise stated in the Introduction.

SUPERSEDES: SC Revenue Ruling #07-3 and all previous advisory opinions and any oral directives in conflict herewith.

REFERENCES: Chapter 36 of Title 12 (2014)

AUTHORITY: S. C. Code Ann. Section 12-4-320 (2014)
S. C. Code Ann. Section 1-23-10(4) (2014)
SC Revenue Procedure #09-3

SCOPE: The purpose of a Revenue Ruling is to provide guidance to the public. It is an advisory opinion issued to apply principles of tax law to a set of facts or a general category of taxpayers. It is the Department's position until superseded or modified by a change in statute, regulation, court decision, or another Departmental advisory opinion.

Introduction:

Nexus is a sufficient connection between a person and a state, and a sufficient connection between an activity, property, or transaction and a state, that allows the state to subject the person, and the activity, property, or transaction to its taxing jurisdiction. The Due Process and Commerce Clauses of the United States Constitution and other federal statutes provide limitations on a state's powers to tax out of state business.

Over the years, the courts have provided limitations and guidelines in determining whether certain activities create nexus in a taxing state. For example, see *Quill Corp. v. North Dakota* 502 U.S. 808, 112 S. Ct. 1904, 119 L. Ed. 2d 27 (1992), *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274, 97 S. Ct. 1076, 51 L. Ed. 326 (1977), *Miller Brothers v. Maryland*, 347 U.S. 340, 347, 74 S. Ct. 535, 98 L. Ed. 744 (1954), *Scripto, Inc. v. Carson*, 362 U.S. 207, 80 S. Ct. 52, 4 L. Ed. 2d 54 (1960), *National Bellas Hess, Inc. v. Department of Revenue*, 386 U.S. 753, 87 S.Ct. 1389, 18 L.Ed.2d 505 (1967), *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 104 S. Ct. 1868 (1984), and *National Geographic Society v. California Bd. of Equal*, 430 U.S. 551, 97 S. Ct. 1386, 51 L. Ed. 2d 631 (1977).

The purpose of this advisory opinion is to provide written guidance from the Department concerning sales and use tax nexus creating activities.

This opinion reflects the Department's official position regarding sales and use tax nexus at this time. Since developments in this area are constantly taking place, any response is subject to change due to a future statute, regulation, court decision, or advisory opinion.

Any change in South Carolina's position as set forth in this document that is not the result of a court case or change in statute or regulation will be prospective. Any change that is the result of a court case will apply to all periods open under the statute unless the court states otherwise and any change in statute or regulation will be applicable as of the effective date established by the General Assembly.

Questions concerning the existence of nexus with South Carolina should be directed to the Department's Nexus/Discovery Section at 803-898-5235 or 803-898-5695.

Qualifications to Responses:

Each response is based upon the specific facts described in the question and the following assumptions:

- The business is selling tangible personal property¹ at retail to residents or others in South Carolina;
- Each specific question by itself was the only possible nexus creating activity or relationship a business has in South Carolina²; and,
- The activities described are not "de minimis" unless the question or answer specifically states otherwise.

A "yes" response indicates the activity or relationship will, by itself, create nexus with South Carolina. A "no" response indicates the activity or relationship will, by itself, not create nexus with South Carolina. However, it is important to note that a combination of several different activities or relationships, even if each by itself does not create nexus, may create nexus with South Carolina. In addition, any variance from the facts stated in a question, or any additional facts not stated in a question, may change the answer set forth in this document.

¹ See Code Section 12-36-60 for the definition of "tangible personal property" and the various imposition provisions of Chapter 36 of Title 12 (Sales and Use Tax Code of Laws) for information as to services and intangibles that are "tangible personal property" by definition.

² Even though some questions specifically state that the activity represents the business' "sole activity" in South Carolina, all other questions represent the business' sole activity in South Carolina whether or not such is specifically stated. The difference in wording only represents how each question was originally presented to the Department.

Each response refers only to sales and use tax nexus. Activities that create nexus for sales and use tax purposes differ somewhat from those that create nexus for other tax purposes.

A. General Activities

	YES	NO
1. The business holds a certificate of authority to conduct business in South Carolina, or is otherwise registered with the Secretary of State or any other regulatory agency in South Carolina.	☐	☒
2. The business maintains a bank account in South Carolina.	☐	☒
3. The business is listed in the local telephone books of cities in South Carolina.	☐	☒
4. The business uses local phone numbers in South Carolina, which are forwarded to its headquarters in another state.	☐	☒

B. Property in South Carolina

	YES	NO
1. The business' sole activity in South Carolina is maintaining or using a place of business for selling tangible personalty.	☒	☐
2. The business' sole activity in South Carolina is maintaining or using a place of business for storing ¹ tangible personal property.	☒	☐
3. The business' sole activity in South Carolina is maintaining inventory in South Carolina.	☒	☐
4. The business' sole activity in South Carolina is maintaining or using a distribution facility.	☒	☐

Note: South Carolina enacted a limited "safe harbor" nexus statute for persons who placed a distribution facility in service in South Carolina after December 31, 2010, but before January 1, 2013. This answer does not apply to a person who has met the investment and job requirements of Code Section 12-36-2691 before January 1, 2013. For persons who met these investment and job requirements, this "safe harbor" is applicable until the earlier of (a) January 1, 2016; (b) when the person no longer meets the requirements of the statute; or (c) the effective date of a law enacted by Congress that allows states to require sales tax collection for taxpayers that do not have substantial nexus. For all other person, this "safe harbor" is no longer available and the above answer is applicable.

¹ See Question B.4.

	YES	NO
5. The business' sole activity in South Carolina is maintaining tangible personal property for lease through a representative.	☒	☐
6. The business' sole activity in South Carolina is the existence of unrelated in-state office (e.g. advertising).	☒	☐
7. The business' sole activity in South Carolina is licensing software for use in South Carolina and		
(a) the business sold and delivered the licensed software into South Carolina via a tape, disk, flash drive, or some other form of tangible personal property as defined in the South Carolina sales and use tax law; or,	☒	☐
(b) the business sold and delivered the licensed software into South Carolina as an attachment to an e-mail or a download from a website.	☐	☒
Note: See SC Revenue Rulings #12-1, 11-2, 03-5 and 96-3.		
8. The business' sole activity in South Carolina is that of a mail-order catalog seller with property or solicitors in South Carolina.	☒	☐
9. The business' sole activity in South Carolina is the drop shipment of catalogs in South Carolina, for mailing to residents within South Carolina.	☒	☐
Note: See Question D.4 for the application of nexus to a business that uses a company in South Carolina to drop-ship merchandise to customers.		
10. The business sells tangible personal property to residents in South Carolina from outside of South Carolina (e.g., telephone, over the Internet, via catalog/direct mail, or otherwise) and delivers merchandise to customers in South Carolina in returnable containers.	☒	☐
11. The business sells tangible personal property at retail to businesses in South Carolina from outside of South Carolina (e.g., telephone, over the Internet, or otherwise) and delivers the merchandise to customers by the business' tractor-trailers or railcars and leaves the trailer or railcar with the customer for a specified number of days or until the next delivery is made during which the customer will remove the merchandise from the trailer or railcar.	☒	☐
12. The business sells tangible personal property to residents in South Carolina from outside of South Carolina (e.g., telephone, over the Internet, via catalog/direct mail, or otherwise) and provides in-state telephone and kiosks that allow customers to access inventories and purchase merchandise from remote subsidiaries.	☒	☐

C. Activities of an Employee or Third Party (e.g., Sales Representative, Independent Contractor or Affiliated Company)

	YES	NO
1. The business' sole activity in South Carolina is the presence of a representative selling in South Carolina.	☒	☐
2. The business authorizes an employee or third party (e.g., independent contractor, affiliated company or other representative) to install, deliver, service, or repair merchandise in South Carolina or hires independent contractor to perform warranty or repair services on tangible personal property in South Carolina. (The repairs may be under warranty for which there is no separate charge or may be under warranty for which there was a separate charge.)	☒	☐
3. The business uses an employee or third party in South Carolina (e.g., independent contractor, affiliated company, or other representative) to investigate, handle or resolve customer issues, provide training or technical assistance, or otherwise provide customer service to customers in South Carolina.	☒	☐
4. The business' sole activity in South Carolina is an employee/representative providing training to South Carolina customers.	☒	☐
5. The business' sole activity in South Carolina is an employee/representative providing trouble-shooting to South Carolina customers.	☒	☐
6. The business sells tangible personal property to residents in South Carolina from outside the state (e.g., by telephone, over the Internet, via catalog/direct mail, or otherwise) and has an employee visit South Carolina four or more times during the year.	☒	☐
7. The business' sole activity in South Carolina is telemarketing activity into South Carolina (telemarketer not located in South Carolina).	☐	☒
8. The business' sole activity in South Carolina is the use of a telemarketing firm with a South Carolina office.	☒	☐
9. The business hires an unrelated call center or fulfillment center located in South Carolina to process telephone or electronic orders that primarily derive from out-of-state customers.	☒	☐
10. The business' sole activity in South Carolina is using an in-state photographer, if the vendor's products are shipped to South Carolina during the photographic sessions.	☒	☐
11. The business collects delinquent accounts using a collection agency in South Carolina or hires attorneys or other third parties to file collection suits in South Carolina.	☒	☐

	YES	NO
12. The business is affiliated with an entity that sells tangible personal property or services to customers in South Carolina, and		
(a) the South Carolina affiliate sells similar merchandise and uses common trade names, trademarks or logos; or,	☒	☐
(b) uses the South Carolina affiliate to accept returns, take orders, perform customer service or distribute advertising materials on its behalf.	☒	☐
13. The business sells tangible personal property to residents in South Carolina from outside the state and authorizes an employee or third party (e.g., sales representative, independent contractor, or affiliated company) to solicit sales in South Carolina.	☒	☐
14. The business' sole activity in South Carolina is soliciting through independent agents.	☒	☐
15. The business' sole activity in South Carolina is using a broker to arrange rentals of customer mailing lists, that constitute tangible personal property under the South Carolina sales and use tax law, to vendors in South Carolina and other states.	☒	☐
16. The business' in-state representative maintains an in-home office.	☒	☐
Note: This answer applies whether or not the business reimburses the in-state representative for the costs of maintaining the in-home office. In addition, as noted elsewhere in this advisory opinion, it is not necessary that a representative maintain an in-state office in order for nexus to exist.		
17. The business sells tangible personal property to residents in South Carolina from outside of South Carolina (e.g., telephone, over the Internet, via catalog/direct mail, or otherwise) and ships its product for distribution to a third-party distributor located in South Carolina that performs the functions such as labeling, packaging, and shipping.	☒	☐
Note: This answer assumes that the third-party distributor did not purchase the merchandise, but is providing a service on behalf of a retailer selling tangible personal property to South Carolina residents.		
18. The business sells tangible personal property to residents in South Carolina from outside of South Carolina (e.g., telephone, over the Internet, via catalog/direct mail, or otherwise) and makes remote sales of tangible personal property to South Carolina residents and holds two or more one-day seminars in South Carolina.	☒	☐

	YES	NO
19. The business sells tangible personal property to residents in South Carolina from outside of South Carolina (e.g., telephone, over the Internet, via catalog/direct mail, or otherwise) and makes remote sales of tangible personal property to South Carolina residents and holds two or more one-day seminars in South Carolina, and has its employees visit South Carolina five times during the year.	☒	☐
20. The business sells gifts cards in affiliated South Carolina stores.	☒	☐
21. The business makes remote sales of "canned software," that constitutes tangible personal property under the South Carolina sales and use tax law, to residents of South Carolina and then sends a representative to customize it to meet the customer's specific needs or to provide other Information Technology services.	☒	☐
22. The business sells tangible personal property while temporarily located in South Carolina for up to three days.	☐	☐

Note: The answer depends on whether or not the business' presence or sales are de minimis, the business' intent with respect to returning to the state, the value of the sales, and other facts and circumstances. However, even if nexus is not established, the seller must be licensed and remit the tax on all sales made by the employee during the employee's time in the state.

23. The business sells tangible personal property to residents in South Carolina from outside of South Carolina (e.g., telephone, over the Internet via catalog/direct mail, or otherwise) and produces an "info-commercial" that runs on an in-state television channel and pays commissions to the local TV station based on a percentage of sales to South Carolina customers who made purchases using the phone number or website address displayed on the infomercial."	☐	☐

Note: The answer depends on the facts and circumstances (e.g., nexus may exist if the advertising consists of a personal endorsement by a local personality).

D. Delivery

	YES	NO
1. The business' sole activity in South Carolina is in-state delivery via company-owned vehicles.	☒	☐
2. The business' sole activity in South Carolina is the presence of a representative to deliver merchandise in South Carolina ⁴ .	☒	☐

⁴ See Question B.4.

	YES	NO
3. The business delivers merchandise in South Carolina by means other than common carrier or the U.S. Postal Service.	☒	☐
4. The business uses a company in South Carolina to drop-ship merchandise to customers.	☐	☒

Note: See SC Revenue Ruling #98-8. In addition, see Question B.9 for the application of nexus to a business whose sole activity in South Carolina is the drop shipment of catalogs in South Carolina for mailing to residents within South Carolina.

E. Transactions with South Carolina Printers⁵.

	YES	NO
1. The business' sole activity in South Carolina is using a South Carolina printing company to print catalogs or advertisements, if the vendor's personnel enter the state occasionally (1-3 times per year) during the printing process.	☐	☒

Note: See Code Section 12-36-75.

2. The business' sole activity in South Carolina is using a South Carolina printing company to print catalogs or advertisements, if the vendor's personnel do not enter South Carolina during the printing process.	☐	☒

Note: See Code Section 12-36-75.

3. The business' sole activity in South Carolina is using a South Carolina printing company where the taxpayer's printing materials or printed goods are stored.	☐	☒

Note: See Code Section 12-36-75.

F. Advertising

	YES	NO
1. The business' sole activity in South Carolina is spillover advertising from neighboring states.	☐	☒

Note: This answer assumes that the advertiser and retailer have no physical presence in South Carolina.

⁵ See Exhibit A.

	YES	NO
2. The business' sole activity in South Carolina is that of a mail-order catalog seller with only mail communication in the state.	☐	☒
Note: This answer assumes that the retailer has no physical presence in South Carolina and that the catalogs are not mailed from within South Carolina.		
3. The business' sole activity in South Carolina is mailing catalogs to South Carolina consumers.	☐	☒
Note: This answer assumes that the retailer has no physical presence in South Carolina and that the catalogs are not mailed from within South Carolina.		
4. The business is an Internet-based retailer with an out-of-state home office and enters into an agreement with a South Carolina operator of a website. The website operator hosts advertisements directing consumers to the website of the out-of-state retailer, and is paid each time an ad is displayed (per impression).	☐	☒
5. The business' sole activity in South Carolina is advertising on local media (e.g., newspapers, radio, TV).	☐	☐
Note: The answer depends on the facts and circumstances (e.g., nexus may exist if the advertising consists of a personal endorsement by a local personality)		
6. The business' sole activity in South Carolina is advertising on national media, which may be circulated in South Carolina (e.g., national magazines or TV).	☐	☐
Note: The answer depends on the facts and circumstances (e.g., nexus may exist if the advertising consists of a personal endorsement by a local personality)		
7. The business' sole activity in South Carolina is advertising on satellite TV.	☐	☐
Note: The answer depends on the facts and circumstances (e.g., nexus may exist if the advertising consists of a personal endorsement by a local personality)		

G. Other Issues

	YES	NO
1. The business sells tangible personal property over the Internet and operates a website which is maintained on a server that is owned by the business and located in South Carolina.	☒	☐

	YES	NO
2. The business makes remote sales of digital content such as music and video that is downloaded by residents of South Carolina.	☐	☒
Sales of digital content that is downloaded is not subject to the tax.		
3. The business sells tangible personal property to residents in South Carolina from outside of South Carolina (e.g., telephone, over the Internet, via catalog/direct mail, or otherwise) and is the single member in a single member LLC that is a disregarded entity and is operating in South Carolina.	☒	☐

Note: As stated in the "Introduction," the above answers are based on the assumption that the business is selling tangible personal property at retail to residents or others in South Carolina and that each specific question by itself was the only possible nexus creating activity or relationship a business has in South Carolina. However, it is important to note that a combination of several different activities or relationships, even if each by itself does not create nexus, may create nexus with South Carolina. In addition, any variance from the facts stated in a question, or any additional facts not stated in a question, may change the answer set forth in this document.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Rick Reames III
Rick Reames III, Director

September 10, 2014
Columbia, South Carolina

EXHIBIT A

PERSONS CONTRACTING WITH STATE COMMERCIAL PRINTER

NEXUS SAFE HARBOR STATUTE

CODE SECTION 12-36-75

(A) Notwithstanding any other provision of this chapter, tangible or intangible property that is:

- (1) owned or leased by a person that has contracted with a commercial printer for printing and used in connection with a printing contract; and
- (2) located at the premises of the commercial printer;

shall not be considered to be, or to create, an office, a place of distribution, a sales location, a sample location, a warehouse, a storage place, or other place of business maintained, occupied, or used in any way by the person. A commercial printer with which a person has contracted for printing by reason of any printing contract which may include storing and shipping the items printed shall not be considered to be in any way a representative, an agent, a salesman, a canvasser, or a solicitor for the person.

(B) Notwithstanding any other provision of this chapter, the following shall not cause a person that has contracted with a commercial printer for printing to have a duty to register as a retailer or to collect or remit the sales or use tax imposed by this chapter:

- (1) the ownership or leasing by that person of tangible or intangible property located at the South Carolina premises of the commercial printer and used in connection with printing contracts;
- (2) the sale by that person of property printed or imprinted at and shipped or distributed from the South Carolina premises of the commercial printer by the commercial printer;
- (3) the activities performed pursuant or incident to a printing contract by or on behalf of that person at the South Carolina premises of the commercial printer by the commercial printer; or
- (4) the activities performed pursuant or incident to a printing contract by the commercial printer in South Carolina for or on behalf of that person

EXHIBIT 13



COMMONWEALTH of VIRGINIA

Department of Taxation

August 23, 2013

Mr. Kurt Lamp
Director, State and Local Tax
Amazon.com
P. O. Box 81226
Seattle, Washington 98108-1226

Re: Request for Ruling: Retail Sales and Use Tax
Amazon Services LLC

Dear Mr. Lamp:

This is in response to your letter dated July 12, 2013, in which you request a ruling on behalf of Amazon.com and its affiliates (collectively "Amazon") regarding its obligation to collect and remit Virginia retail sales and use tax for sales made by third party merchants.

FACTS

Amazon Services, LLC ("Amazon Services") operates the Internet platform on which related entities and unrelated third parties offer tangible personal property and digital products for sales to customers. It provides a variety of e-commerce services including, but not limited to: (1) provision of e-commerce services to merchants, including listing products for sale on the Internet platform; and (2) provision of a self-service toolset for sellers to design, build and manage on-line webstores where they can offer their products for sale. Currently, Amazon Services is not a retailer as it does not sell tangible personal property or taxable services.

Amazon Services also offers a fulfillment services program called Fulfillment by Amazon ("FBA" or the "FBA Program") to third party merchants ("merchants"). Under the FBA program, merchants can sell products through any retail website, including the www.amazon.com website, and contract with Amazon Services to handle fulfillment. Fulfillment means Amazon Services will store, package and ship products sold by merchants to their customers. FBA operates differently depending on whether the merchant lists its products for sale on the www.amazon.com website or an unrelated third party's website.

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Mr. Kurt Lamp
August 23, 2013
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To offer FBA, Amazon Services maintains an intercompany arm's length agreement with Amazon Fulfillment Services, Inc. ("AFS"), which operates fulfillment centers through separate legal entities. Under this agreement, AFS, through the fulfillment centers, provides storage, packaging and shipment of merchant's products. Merchants enter into agreements with Amazon Services regarding all fees and terms associated with the fulfillment services. Merchants are not parties to any agreement with AFS or the fulfillment centers.

Amazon Services assists merchants in listing their properties for sale on the www.amazon.com website, which functions like a virtual "shopping mall" on the Internet. At any time a merchant may withdraw the listing of any product from the www.amazon.com website. Merchants will send their products listed for sale on the www.amazon.com website to a fulfillment center for storage. Amazon Services will instruct the merchant to send their products to a specific fulfillment center in Virginia or another state. Amazon Services, AFS and the fulfillment centers do not own, maintain title to, or purchase the products that are stored at the fulfillment center by merchants. At all times, the products are owned by merchants and, at any point, merchants can store more products at a fulfillment center or request return of their products. The merchants set the prices for their products.

Under FBA, the fulfillment of the merchant's sales is handled differently depending on whether the merchant lists products for sale on an unrelated third party's website or on the www.amazon.com website.

For merchants that use FBA and list their products for sale on another website, Amazon Services does not handle collection of any sales proceeds, including any associated sales tax. The merchant must advise Amazon Services when it makes sales of goods being stored by AFS. Amazon Services then advises AFS to release the goods for delivery to the merchant's customer. Upon receipt of the notification, AFS picks, packs and ships the products to the merchant's customers from the merchant's stock of goods according to specifications provided by the merchant.

For merchants that list their product for sale on www.amazon.com, when a customer selects a merchant's product to purchase, the detail order listing page that customers must view prior to placing orders clearly indicates the merchants as the seller of record. The sale is automatically processed and a message is instantaneously sent by Amazon Services to the fulfillment center. The message notifies the fulfillment center to release the merchant's product for packaging and shipment to the merchant's customer. The products are shipped from the fulfillment center via common carrier directly to the merchant's customer. The fulfillment center never takes title or ownership of the products at any point in the process. The fulfillment center only handles the storage and preparation of the products for shipment to the merchant's customer.

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As part of the FBA, Amazon Services also manages all customer service associated with the sale and fulfillment of merchants' products listed for sale on www.amazon.com. Customer service includes use of Amazon Services' online return center to handle customer inquiries, refunds and returns. For merchants that do not list their products for sale on www.amazon.com, customer service is not offered for their transactions.

The payment processing and collection of the sales proceeds is handled differently depending on whether the merchant lists its products for sale on www.amazon.com or another website. When a merchant lists its products for sale on www.amazon.com and a customer purchases a merchant's product, Amazon Services handles the payment processing of the sale and collects the sale proceeds on behalf of the merchant. After Amazon Services receives the sales proceeds from the merchant's customer, it deposits the sales proceeds, less charges for its services, to the merchant's account as part of the normal settlement cycle. The payment processing and any sales tax calculations for sales on www.amazon.com are provided by Amazon Services.

Based on these facts, you present two issues:

- (1) Is Amazon Services liable to collect and remit Virginia sales tax on sales made by merchants to purchasers in Virginia when such merchants participate in the FBA program?
- (2) Is AFS, or the fulfillment centers, liable for the remittance of Virginia sales tax on sales made by merchants to purchasers in Virginia when such merchants participate in the FBA program?

RULING

Virginia Code § 58.1-603 imposes the retail sales and use tax on every person "who engages in the business of selling at retail or distributing tangible personal property" in Virginia. The tax is to be collected by all persons who are "dealers" as defined in *Va. Code* § 58.1-612. *Virginia Code* § 58.1-612 lists several definitions of the term "dealer." Pursuant to Subsection B 3 of this statute, the term "dealer" includes any person who:

Sells at retail, or who offers for sale at retail, or who has in his possession for sale at retail, or for use, consumption, or distribution, or for storage to be used or consumed in this Commonwealth, tangible personal property.

A "sale at retail" is defined as "a sale to any person for any purpose other than for resale in the form of tangible personal property or services." A "sale" is defined as "any transfer of title or possession, or both, exchange, barter, lease or rental, conditional or

Mr. Kurt Lamp
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otherwise, in any manner or by any means whatsoever, of tangible personal property and any rendition of a taxable service for a consideration." See *Va. Code* § 58.1-602.

Amazon Services

Based on the terms of the agreement between Amazon Services and the merchants, Amazon Services is not the seller of record of products sold by merchants. Merchants that sell products on www.amazon.com are always the seller of record, which is clearly indicated on the product's web page.

In order for a transaction to constitute a "sale," there must be a transfer of title or possession for a consideration. There is no transfer of title or possession from Amazon Services to the customers because Amazon Services does not hold title to the merchants' products. Merchants maintain title to their goods at all times. Amazon Services does not take or maintain possession of the merchants' products. Under the FBA program, merchants provide their products to AFS for storage until they are sold.

Amazon Services does not receive consideration from customers for property sold by merchants. Amazon Services is paid a fee by the merchants for the provision of services, such as providing display of the property, order processing, web development services, and storage and fulfillment services. The fees paid for these services do not constitute retail sales as defined in *Va. Code* § 58.1-602. The retail sale occurs between the merchant and the customer.

For the reasons noted above, Amazon Services is not engaged in retail sales with respect to products sold by merchants. Accordingly, Amazon Services is not considered a dealer under *Va. Code* § 58.1-612 B 3.

Virginia Code § 58.1-612 B 7 includes in the definition of dealer every person who "as a representative, agent, or solicitor, of an out-of-state principal, solicits, receives and accepts orders from persons in this Commonwealth for future delivery and whose principal refuses to register as a dealer under § 58.1-613." Based on the information provided, Amazon Services is not an agent for the merchants who are making retail sales of tangible personal property. The agreement between Amazon Services and the merchants specifies the two parties "are independent contractors, and nothing in this Agreement will create any partnership, joint venture, agency, franchise, sales representative, or employment relationship."

Furthermore, in Public Document (P.D.) 99-94 (04/30/1999), the Department cited two factors under Virginia law that are necessary for an agency relationship to be established. First, the agent must be subject to the principal's control, with regard to the work to be done and the manner of performing it. Actual control is not the test; it is the

right to control that is determinative. Second, the work has to be done on the business of the principal or for his benefit.

In regard to the first factor, merchants do not have actual control over the work to be done by Amazon Services. Merchants enter into the agreement with Amazon Services for the provision of services. Merchants pay Amazon Services in exchange for services rendered. The manner in which the services are performed is controlled by the Agreement between Amazon Services and the merchants. The Agreement clearly states the rights and obligations of each party, none of which entitles one party to control the work of the other. Because the first factor of the agency test is not met, there is no agency relationship. Therefore, Amazon Services is not considered a dealer pursuant to Va. Code § 58.1-612 B 7.

Based on the foregoing, Amazon Services is not considered a dealer under Va. Code § 58.1-612 with respect to sales made by independent merchants on the Amazon Internet platform. Amazon Services is not liable to collect and remit Virginia sales tax on sales made by merchants to purchasers in Virginia when such merchants participate in the FBA program

AFS and Fulfillment Centers

As previously noted, merchants that sell products on www.amazon.com are always the sellers of record, which is clearly indicated on the product's web page. Neither AFS nor the fulfillment centers maintain title or ownership of the merchants' property.

In order for a transaction to constitute a "sale," there must be a transfer of title or possession for a consideration. There is no transfer of title from AFS or the fulfillment centers to the customers because they do not hold title to the merchants' products. Merchants maintain title to their goods at all times. AFS and the fulfillment centers do take possession of the merchants' products under the FBA program; however, they do not receive consideration from the customers for the goods sold by merchants. Rather, AFS and the fulfillment centers are paid by Amazon Services for the services they provide – storage, packaging and shipping of the merchants' products. The fees paid for these services do not constitute retail sales as defined in Va. Code § 58.1-602. The retail sales occur between the customers and the merchants, who transfer title to their products directly to their customers, receive the purchase price for the goods, and set the purchase price.

For the reasons noted above, AFS and the fulfillment centers are not engaged in retail sales with respect to products sold by merchants. Accordingly, AFS and the fulfillment centers are not considered a dealer under Va. Code § 58.1-612 B 3.

Mr. Kurt Lamp
August 23, 2013
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In regard to the definition of dealer under *Virginia Code* § 58.1-612 B 7, neither AFS nor the fulfillment centers maintain an agreement with the merchants. The fulfillment centers store, package and ship merchants' products pursuant to an agreement with Amazon Services. Their services are performed for Amazon Services. The merchants do not have the right to control the business decisions and processes of AFS and the fulfillment centers. Because the first factor of the agency test established in P.D. 99-94 is not met, there is no agency relationship. Therefore, AFS and the fulfillment centers are not considered a dealer pursuant to *Va. Code* § 58.1-612 B 7.

Based on the foregoing, AFS and the fulfillment centers are not a dealer under *Va. Code* § 58.1-612 with respect to sales made by independent merchants on the Amazon Internet platform. AFS and the fulfillment centers are not liable to collect and remit Virginia sales tax on sales made by merchants to purchasers in Virginia when such merchants participate in the FBA program.

Presumption of Nexus - Recent Law Change

Effective on the earlier of September 1, 2013, or the effective date of federal legislation authorizing states to require remote sellers to collect taxes on goods shipped to in-state purchasers, *Virginia Code* § 58.1-612 D creates a rebuttable presumption that an out-of-state dealer has sufficient activity in Virginia to require the dealer to register if a "commonly controlled person" maintains a distribution center, warehouse, fulfillment center, office, or similar location in Virginia that facilitates the delivery of tangible personal property that is sold by the out-of-state dealer. The term "commonly controlled person" is defined as any person that is a member of the same "controlled group of corporations," as defined in § 1563(a) of the Internal Revenue Code, as the dealer or any other entity that, notwithstanding its form of organization, bears the same ownership relationship to the dealer as a corporation that is a member of the same controlled group of corporations.

In order for the presumption of nexus to apply, the out-of-state dealer must be part of a commonly controlled group of corporations that maintains some form of physical presence in Virginia. In the situation you present, the merchant (*i.e.*, the out-of-state dealer) is not a member of the same controlled group of corporations that maintain the fulfillment centers or similar location in Virginia. The fulfillment centers are owned, operated and maintained by a totally unrelated entity that has no ownership relationship to the merchant. As previously determined, Amazon Services, AFS and the fulfillment centers are not dealers. Accordingly, *Va. Code* § 58.1-612 D is not applicable and no presumption of nexus is created that would trigger a tax collection responsibility for those entities.

This response is based on the facts presented as summarized above. Any change in facts or the introduction of new facts may lead to a different result.

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The *Code of Virginia* sections and public document cited are available on-line at www.tax.virginia.gov in the Laws, Rules and Decisions section of the Department's website. If you have any questions regarding this ruling, you may contact Mike Melson, Director of the Appeals and Rulings Division, at 804-371-6040 or via e-mail at mike.melson@tax.virginia.gov.

Sincerely,



Craig M. Burns
Tax Commissioner

AR/1-5455177313

EXHIBIT 14

Google Play Help

[GOOGLE PLAY](#)[FORUM](#)[CONTACT US](#)

Tax information for Google Play purchases

You'll always see tax that will be charged on the checkout screen before completing your purchase. The way Google Play calculates and handles tax depends on the type of content.

[Apps/Games on Google Play](#)

Purchases are made from the developer of the app. In most locations, the developer is responsible for charging taxes (where applicable). For customers in the EU Member States, Google is responsible for charging, collecting, and remitting the VAT on sales as a result of changes in EU VAT legislation.

[Books, movies/TV, music and magazines](#)

Tax on these items is determined based on digital good tax laws where you're located.

[Devices](#)

Google Play no longer sells devices. For more information, find [tax information in Google Store Help Center](#).

Sales taxes

[On sales by Google \(for U.S. customers\)](#)

Google Play sales in which Google is the seller of record may be subject to sales tax depending on a state's tax laws.

If a sale is subject to sales tax, the amount of tax charged will be based on the customer billing address. Tax is generally calculated on the total selling price and may include charges for shipping and handling depending on your state's tax law.

[Google is currently registered to collect tax in these U.S. states.](#)

	Idaho	Massachusetts	New York	Tennessee	

Alabama (select cities)				
Arizona (select cities)	Illinois	Michigan	North Carolina	Texas
Arkansas	Indiana	Minnesota	North Dakota	Utah
California	Iowa	Mississippi	Ohio	Vermont
Colorado (select cities)	Kansas	Missouri	Oklahoma	Virginia
Connecticut	Kentucky	Nebraska	Pennsylvania	Washington
District of Columbia	Louisiana (select cities)	Nevada	Rhode Island	West Virginia
Florida	Maine	New Jersey	South Carolina	Wisconsin
Georgia	Maryland	New Mexico	South Dakota	Wyoming

On sales by sellers other than Google (for U.S. customers)

For sales of certain content such as apps, books, and other digital content, Google may not be the seller of record, meaning individual sellers are responsible for determining applicable sales and use taxes. Individual sellers may have different sales and use tax collection requirements based on their specific business activities and the taxability of digital content in a particular state. Therefore, taxes on these sales may be different from a sale in which Google is the seller of record.

Google does not process sales tax refunds or exemption certificates for these sellers. Sales tax refunds and specific tax questions for these sales should be obtained by contacting the seller directly.

Please consult with a tax adviser or your state tax agency regarding sales and use tax reporting requirements.

Value Added Tax (VAT)

Google Play sales in which Google is the seller of record may be subject to Value Added Tax (VAT), or equivalent. VAT is applicable to countries outside of the U.S.

If a sale is subject to VAT, the VAT charged will be based on the applicable VAT rules for content.

Note: Request VAT invoices for Google Play purchases through Google Payments. Find out how to [request a VAT invoice](#).

Tax-exempt Customers

If you're tax-exempt, you still may need to pay taxes at the time of your Google Play purchase. If you think you're eligible for a tax refund, select the type of content you purchased to learn more.

Keep in mind tax exemption only applies in select countries, and all refund requests are subject to review.

Apps & games

For app purchases on Google Play, contact the app's developer to request a tax refund. Learn more about how to [find developer contact information](#).

Books, magazines, movies/TV, music

To request a tax refund, [contact us](#) with the following information:

- Name
- State tax exemption form and/or letter
- A copy of the credit card used for the transaction (with the card number blocked out for security purposes)
- Order Number
- Billing address
- Items for which a refund is being requested
- Amount of tax refund being requested

Tax holidays

Some states in the U.S. offer sales tax holidays throughout the year. To see if your purchase qualifies, contact your state's department of revenue/taxation. [Here's a listing of state department websites](#).

Note: The EU Member States include Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, United Kingdom.

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EXHIBIT 15

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2015 Sales and Use Tax Policy Changes

Effective **July 30, 2015**, Sears Marketplace will provide Sellers the freedom to make their own tax determinations as to which jurisdictions their customers will be charged state and local sales and use tax. The new policy will bring Sears Marketplace in line with our online competitors and drive more traffic to our expanding platform.

Sears Marketplace will now only collect state and local sales and use tax on purchases of merchandise in jurisdictions where the Marketplace Seller indicates it has a tax remittance and filing obligation. As a result, every Seller is now solely responsible for remitting and reporting all sales and use tax collected from the online purchaser to the taxing jurisdictions in which the Seller is subject to tax.

Beginning on **February 19, 2015**, Marketplace Sellers can visit their business account profile located within the Seller Portal and select which taxing jurisdictions Sears Marketplace will charge and collect tax in. When the new policy goes into effect **July 30, 2015**, Sears Marketplace will continue to add tax only on merchandise sales in the jurisdictions Seller affirmatively selected in their business account profile.

Please note that it is extremely important for every Seller to indicate the jurisdictions in which they are currently subject to tax. Any failure on part of the Seller to collect and remit state and local sales and use tax in jurisdictions in which they are subject to a legal tax remittance and reporting requirement may result in the Seller incurring a tax liability in that jurisdiction.

How to Select your Taxing Jurisdiction

Sellers will need to have their primary account user log in to their account. From there, the primary user can find the tax jurisdiction selection page by navigating to the Account Settings tab in the upper right of the seller portal screen by using the arrow next to their name. Once the primary user has accessed the Account Settings tab, the changes will be made in the Business Info sub-tab.

The primary user will be able to select multiple states from within the single drop down.

Tax Jurisdictions

Please select the jurisdictions in which you wish to charge, collect, and remit state and local sales and use tax and similar fees.

Taxable States: Illinois

☐ I elect not to charge, collect, and remit tax or other fees in any taxing jurisdiction, and I assume all corresponding risks and legal liability.

Save

Sellers can either choose the jurisdictions in which Sears Marketplace will charge and collect sales and use tax OR they can choose to elect not to charge, collect, and remit in any taxing jurisdiction.

Seller must select one of the two options above before the effective date of change (**July 30, 2015**). Sellers who fail to make a choice by **July 30, 2015** will be suspended until they make their selection.

Once you have chosen your new tax jurisdictions in the seller portal, an inventory update to all items in your catalog is REQUIRED to bring your items back online.

New API Changes July 30, 2015:

Purchase Order Details

- <https://seller.marketplace.sears.com/SellerPortal/api/oms/purchaseorder/v11?email={emailaddress}&password={password}&ponumber={ponumber}>
- <https://seller.marketplace.sears.com/SellerPortal/api/oms/purchaseorder/v11?email={emailaddress}&password={password}&status={status}>
- <https://seller.marketplace.sears.com/SellerPortal/api/oms/purchaseorder/v11?email={emailaddress}&password={password}&fromdate={YYYY-MM-DD}&todate={YYYY-MM-DD}>

XSD

- <https://seller.marketplace.sears.com/SellerPortal/s/schema/rest/oms/export/v11/purchase-order.xsd>

Sample

- <https://seller.marketplace.sears.com/SellerPortal/s/schema/samples/rest/oms/export/v11/purchase-order.xml>

Order Adjustment Details

- <https://seller.marketplace.sears.com/SellerPortal/api/oms/orderadjustment/v3?email={emailaddress}&password={password}&ponumber={ponumber}>
- <https://seller.marketplace.sears.com/SellerPortal/api/oms/orderadjustment/v3?email={emailaddress}&password={password}&status={status}>
- <https://seller.marketplace.sears.com/SellerPortal/api/oms/orderadjustment/v3?email={emailaddress}&password={password}&fromdate={YYYY-MM-DD}&todate={YYYY-MM-DD}>

XSD

- <https://seller.marketplace.sears.com/SellerPortal/s/schema/rest/oms/export/v3/order-adjustment-detail.xsd>

Sample

- Sample (which shows several possible combinations of adjustments for an order but without real values):

<https://seller.marketplace.sears.com/SellerPortal/s/schema/samples/rest/oms/export/v3/order-adjustment-detail.xml>

- Sample (Seller initiated full price refund with product return):

<https://seller.marketplace.sears.com/SellerPortal/s/schema/samples/rest/oms/export/v3/order-adjustment-detail-3.xml>

- Sample (Seller initiated partial refund without product return)
<https://seller.marketplace.sears.com/SellerPortal/s/schema/samples/rest/oms/export/v3/order-adjustment-detail-4.xml>

We have included the tax reference details in the **purchase-order.xsd**. **purchase-order.xsd** has internal reference to **common-fields-v11.xsd**. So sellers will need both the xsd's to make changes at their end.

[Note] All order versions of the API to retrieve Purchase Order details will be deprecated following release of this project beginning July 30, 2015.

Tags: [tax](#)

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EXHIBIT 16



FREE Walmart Grocery pickup

- [Walmart.com](#)
- [Help Center](#)
- [Find Answers](#)
- How We Determine Sales Tax

How We Determine Sales Tax

For Items Purchased from a Walmart Marketplace Seller

If your Order Details page in My Account shows the seller of your item to be anyone other than "Walmart.com," then you have purchased that item from one of our Marketplace Sellers.

Marketplace Sellers are responsible for collecting and remitting the sales tax for the items they sell. They may choose to add the cost of tax to the price of their items, or they can list the tax separately. A Marketplace Seller may not charge tax in all 50 states and U.S. territories. This means you may or may not see a charge for tax in your cart. If you have questions about a Marketplace Seller's tax practices, please contact the Seller directly.

Please visit the [Marketplace Retailer Information Pages](#) for Marketplace Seller details, tax policies and contact information.

For Items Purchased from Walmart.com

Tax is charged for orders shipped to U.S. states, protectorates and territories where sales taxes are applicable. Items sent to APO / FPO military addresses are not subject to taxes.

The amount of tax charged is based on current tax rates. Gift-wrap and shipping charges may also be subject to tax in applicable states. Tax will be refunded for returned items.

Walmart Gift Cards purchased at Walmart.com or at a Walmart store are not taxable. State and local tax rates are subject to change at any time.

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AGENDA

South Carolina House of Representatives



Legislative Oversight Committee

*Tuesday, October 23, 2018
Room 110 - Blatt Building
10:00 a.m.**

Pursuant to Committee Rule 4.9, S.C. ETV shall be allowed access for internet streaming whenever technologically feasible.

AGENDA

- I. Approval of minutes
- II. Discussion of studies of agencies, if notice is received on or before October 23, 2018, in accordance with Standard Practice 12.5

There are currently four subcommittee studies in the drafting phase:

- *Healthcare and Regulatory Subcommittee's Study of the Department of Disabilities and Special Needs;*
- *Economic Development, Transportation, and Natural Resources Subcommittee's Study of Department of Revenue;*
- *Law Enforcement and Criminal Justice Subcommittee's Study of the Commission on Prosecution Coordination; and*
- *Executive Subcommittee's Study of the Department of Parks, Recreation, and Tourism.*

Additional subcommittee studies of agencies may move to the drafting phase as various subcommittees continue to meet.

- III. Discussion of Committee administrative matters
- IV. Adjournment

**It is anticipated the Committee will break for lunch.*

RECOMMENDATIONS

General Information

The following **recommendations include areas** the Subcommittee identifies for **potential improvement**. These recommendations are based on the agency's self-analysis requested by the Committee, discussions with the agency during multiple meetings, and analysis of the information obtained by the Subcommittee. This information, including, but not limited to, the Program Evaluation Report, Accountability Report, Restructuring Report and videos of meetings with the agency, is available on the Committee's website.

Continue

The Subcommittee has six recommendations to continue agency programs with revisions. All recommendations are adopted at the Subcommittee meeting on September 10, 2018.⁶⁸ The first five recommendations are for the General Assembly and involve statutory changes. The sixth recommendation is for DOR. These recommendations are summarized in Table 14. Further details on each recommendation follow the table.

Table 14. Summary of recommendations arising from the study process.

Topic	Recommendations for
... General Assembly	
Financial Institution Data Match Program	1. Allow DOR to participate in the multistate Financial Institution Data Match program to share data files with financial institutions to identify financial assets of debtors with past due liabilities by amending S.C. Code Ann. § 12-54-265.
Centralized Tax Lien System	2. Allow DOR to implement a centralized system of filing and indexing of tax liens that is accessible to the public through DOR's website by amending S.C. Code Ann. § 12-54-122(G).
Alcohol Liability Coverage for Government Entities	3. Allow the liability coverage provided by the Tort Claims Act for governmental entities to satisfy the liability coverage required for a governmental entity to hold an alcohol beverage on premise consumption license by amending S.C. Code Ann. § 61-2-145.
Tax Credit for Energy Efficient Vehicles	4. Provide clear guidelines to determine eligibility for the income tax credit for the purchase of new energy efficient vehicles by amending S.C. Code Ann. Title 12, Chapter 6.
Taxation of Online Third-Party Sales	5. Ensure that online third-party sales will be subject to tax by amending definitions in S.C. Code Ann. § 12-36-70.
... Department of Revenue	
Collection of Local Sales Taxes through MyDORWAY	6. Investigate the costs and benefits of giving local governments the option of collecting local taxes through the MyDORWAY system and update the Committee on its findings within six months of the publication of the full Committee report.

#3
Tabled

? New (Hickson) Have DOR look at 12-36-570⁴¹ regarding Festivals/Retail Business Licenses.

Recommendation 2

That the General Assembly amend S.C. Code § 12-54-265 to **allow DOR to participate in the Financial Institution Data Match program** to share data files with financial institutions to identify financial assets of debtors with past due liabilities (see draft language below).

Discussion In its PER, DOR asserts that participating in the Financial Institution Data Match (FIDM) program would allow it to share data files with financial institutions to identify financial assets of debtors with past due liabilities in order to streamline the collection process.⁶⁹ In response to Subcommittee questioning, the agency indicates it anticipates collecting \$105 million of outstanding debt through this program, and there is no cost to the agency of participating. Any fees to participating financial institutions would be paid from collected funds. Further, DOR reports sixteen other states' revenue agencies participate in this program.⁷⁰ The South Carolina Department of Social Services currently is permitted to participate in FIDM in order to collect child support obligations.⁷¹ This recommendation was adopted by the Subcommittee on September 10, 2018. All members present voted in favor.⁷²

Draft Language Chapter 54 of Title 12 is amended by adding the following section:

SECTION 1. Section 12-54-265. Notwithstanding any other provision of law, the department may submit to a financial institution, as defined in Section 63-17-2310(A)(2), information that identifies a debtor named on a warrant for distraint that has been issued and filed by the department or whose debt has been submitted to the department for collection under the provisions of Section 12-4-580. For purposes of debts named on warrants for distraint, the debt must be at least one hundred eighty days old from the date of assessment. The department may submit the information to the financial institution on a quarterly basis or, with the agreement of the financial institution, on a more frequent basis. A financial institution that receives the information must conduct a data match. The financial institution must then provide to the department, in a manner and form prescribed by the department, information concerning the debtor for purposes of collecting outstanding debts. The information provided to the department must include, but is not limited to, the information required pursuant to Section 63-17-2320(A). The financial institution must be paid a reasonable fee out of the collected funds not to exceed actual cost.

SECTION 2. This Act takes effect upon the signature of the Governor.

Recommendation 3

That the General Assembly amend S.C. Code Ann. § 12-54-122(G) to allow DOR to implement a **centralized system of filing and indexing of tax liens** that is accessible to the public through DOR's website (see draft language below).

Discussion DOR reports filing approximately 56,213 tax liens across South Carolina's 46 counties in FY 17-18.⁷³ The South Carolina Department of Employment and Workforce (DEW) reports filing over 9,000 tax liens in 2017.⁷⁴ As provided by S.C. Code Ann. § 8-21-300(20)(a), DOR and DEW pay a \$10 fee to the county for each lien. Liens filed in any county are public records, and many counties provide online access. However, these

documents generally must be accessed through each county's website and there may be a fee to view documents online.⁷⁵ DOR anticipates saving over \$600,000 annually if allowed to implement a statewide tax lien filing system instead of filing its liens with counties. Most of the savings would be in the \$10 recording fee it would no longer owe for each lien.⁷⁶ This change would also increase the ease of public access to these documents, as all of DOR's tax liens would be available to the public on a single website. This recommendation was adopted by the Subcommittee on September 10, 2018. All members present voted in favor.⁷⁷

Draft Language Section 12-54-122(G) of the 1976 Code is amended by adding an appropriately numbered item at the end to read:

SECTION 1. Instead of filing a tax lien notice pursuant to item (1), the department may implement a system of filing and indexing liens which must be accessible to the public over the Internet or through other means as the department considers appropriate. A lien filed pursuant to this item is effective statewide from the date and time it is recorded and encumbers all the taxpayer's property and rights to property as provided in Section 12-54-120, regardless of the property's location. A lien filed pursuant to item (1) remains effective from the date and time it was recorded. Nothing in this item may be construed so as to extend the effectiveness of a lien beyond ten years from the date of filing, as provided in Section 12-54-120.

SECTION 2. This act takes effect July 1, 2019.

Recommendation 3:

That the General Assembly amend S.C. Code Ann. § 61-2-145 to allow the **liability coverage provided by the Tort Claims Act** for governmental entities to satisfy the liability coverage required for a governmental entity to hold an **alcohol beverage on premise consumption license** (see draft language below).

Discussion DOR reports that S.C. Code Ann. § 61-2-145 currently requires any entity licensed to sell alcoholic beverages for on-premises consumption that does so after five o'clock p.m. to maintain liability insurance coverage of one million dollars.⁷⁸ However, the Tort Claims Act limits the liability of South Carolina governmental entities to \$600,000 in most cases.⁷⁹ This statutory change is expected to save money for governmental entities that hold a license to sell alcoholic beverages for on-premises consumption and do so after five o'clock p.m.⁸⁰ This recommendation was adopted by the Subcommittee on September 10, 2018. Two of the members present voted in favor, and the third abstained.⁸¹

Draft Language Section 61-2-145 is amended by adding an appropriately numbered item at the end to read:

SECTION 1. During the period of the biennial permit or license, a governmental entity licensed or permitted to sell alcoholic beverages for on premises consumption, which remains open after five o'clock p.m. to sell alcoholic beverages for on premises

consumption, is required to maintain a tort insurance policy that does not exclude liquor liability.

SECTION 2. This Act takes effect upon the signature of the Governor.

Recommendation 4

That the General Assembly amend S.C. Code Ann. Title 12, Chapter 6 to provide clear guidelines to determine eligibility for the **income tax credit for the purchase of new energy efficient vehicles** (see draft language below).

Discussion DOR reports that South Carolina law allows for an income tax credit for those who claim a federal tax credit for the purchase of new qualified fuel cell motor vehicles, advanced lean burn technology motor vehicles, or hybrid motor vehicles. However, this federal tax credit is no longer available. This addition to statute would provide clear guidelines for the administration of this tax credit independent of federal requirements.⁸² This recommendation was adopted by the Subcommittee on September 10, 2018. All members present voted in favor.⁸³

Draft Language Amend Title 12, Chapter 6 by adding the following new section:

SECTION 1. (A) For tax years beginning on or after January 1, 2018 and before January 1, 2021, a resident individual taxpayer is allowed an income tax credit for the purchase of a new motor vehicle that meets the requirements of subsection (D). The credit must be claimed for the tax year in which the new motor vehicle is purchased.

(B) The credit amount for any new motor vehicle is:

(1) one hundred dollars for each new motor vehicle for which the mileage is at least forty-five but less than fifty-five; or

(2) three hundred dollars for each new motor vehicle for which the mileage is at least fifty-five.

(C) The credit allowed by this section is nonrefundable. If the amount of the credit exceeds the taxpayer's income tax liability for the applicable tax year, any unused credit may be carried forward for five years.

(D) For purposes of this section:

(1) 'new motor vehicle' means a car or truck that:

(a) is classified as a 'private passenger motor vehicle' pursuant to Section 56-3-630;

(b) is registered for operation upon the highways in this State; and

(c) has incurred five thousand or fewer miles at the time of purchase.

(2) 'mileage' means the combined miles per gallon of gasoline ("MPG") or miles per gallon of gasoline equivalent ("MPGe") for the make and model of the vehicle as published in the Fuel Economy Guide for the applicable model year.

(3) 'Fuel Economy Guide' means the annual Fuel Economy Guide published by the United States Department of Energy, Office of Energy Efficiency and Renewable Energy, and the United States Environmental Protection Agency.

SECTION 2. This act takes effect upon approval by the Governor and applies to income tax years beginning on or after January 1, 2018 and before January 1, 2021.

Recommendation 5

That the General Assembly amend definitions in S.C. Code Ann. § 12-36-70 to ensure that **online third-party sales will be subject to tax** (see draft language below).

Discussion DOR reports that this statutory change would allow it to force internet marketplace retailers, such as Amazon and eBay, to collect and remit sales tax on items sold by third-party vendors through the marketplace sites. Without this ability, DOR would have the right to collect sales tax directly from some third-party sellers, but it predicts that the significant administrative burden of collecting from so many individuals and companies would result in a large percentage of these taxes going uncollected. As an example of the potential impact of this statutory change on sales tax revenues, DOR estimates that, if there had been a law like this in 2016, Amazon's additional sales tax liability for that year would have been \$57 million.⁸⁴ This recommendation was adopted by the Subcommittee on September 10, 2018. All members present voted in favor.⁸⁵

Draft Language SECTION 1

The General Assembly finds that the South Carolina Sales and Use Tax Act requires any person engaged in business as a retailer to remit the sales and use tax on all retail sales of tangible personal property not otherwise excluded or exempted from the tax. This requirement applies to all retail sales of tangible personal property by the retailer, whether the tangible personal property is owned by the retailer or another person. Retailers selling tangible personal property at retail on consignment, by auction, or in any other manner must remit the sales and use tax on such retail sales.

The General Assembly further finds that Internet marketplaces where a person sells tangible personal property at retail by listing or advertising, or allowing the listing or advertising of another person's products on an online marketplace, and collects or processes the payment from the customer are retailers required to remit the sales and use tax on such retail sales under the provisions of the South Carolina sales and use tax law.

The General Assembly also finds, with the changing economy and ever expanding role of the Internet in the retail market, that the longstanding requirement in the sales and use tax law that a retailer remit the tax on retail sales of tangible personal property owned by another person must apply to all retailers, including both Internet retailers and brick and mortar retailers.

Therefore, to ensure retailers selling another person's tangible personal property on the Internet clearly understand, and are complying with, the sales and use tax law in the same manner as retailers selling another person's tangible personal property in a brick and mortar store, the following provisions, which do not represent a change in policy, are enacted to further set forth South Carolina's longstanding position:

SECTION 2

Amend code section 12-36-70 to add item (3) as follows:

SECTION 12-36-70. "Retailer" and "seller".

"Retailer" and "seller" include every person:

(1)(a) selling or auctioning tangible personal property whether owned by the person or others;

(b) furnishing accommodations to transients for a consideration, except an individual furnishing accommodations of less than six sleeping rooms on the same premises, which is the individual's place of abode;

(c) renting, leasing, or otherwise furnishing tangible personal property for a consideration;

(d) operating a laundry, cleaning, dyeing, or pressing establishment for a consideration;

(e) selling electric power or energy;

(f) selling or furnishing the ways or means for the transmission of the voice or of messages between persons in this State for a consideration. A person engaged in the business of selling or furnishing the ways or means for the transmission of the voice or messages as used in this subitem (f) is not considered a processor or manufacturer;

(2)(a) maintaining a place of business or qualifying to do business in this State; or

(b) not maintaining an office or location in this State but soliciting business by direct or indirect representatives, manufacturers agents, distribution of catalogs, or other advertising matter or by any other means, and by reason thereof receives orders for tangible personal property or for storage, use, consumption, or distribution in this State; or

(3) operating as a marketplace facilitator, as defined in Code Section 12-36-71.

The department, when necessary for the efficient administration of this chapter, may treat any salesman, representative, trucker, peddler, or canvasser as the agent of the dealer, distributor, supervisor, employer, or other person under whom they operate or from whom they obtain the tangible personal property sold by them, regardless of whether they are making sales on their own behalf or on behalf of the dealer, distributor, supervisor, employer, or other person. The department may also treat the dealer, distributor, supervisor, employer, or other person as a retailer for purposes of this chapter.

Add new code section 12-36-71 to read:

SECTION 12-36-71: Marketplace facilitator

(A) "Marketplace facilitator" means any person engaged in the business of facilitating a retail sale of tangible personal property by:

(1) listing or advertising, or allowing the listing or advertising of, the products of another person in any marketplace where sales at retail occur; and

(2) collecting or processing payments from the purchaser, either directly or indirectly through an agreement or arrangement with a third party;

regardless of whether the marketplace facilitator receives compensation or other consideration in exchange for its services.

(B) A marketplace may be physical or electronic and includes, but is not limited to, any space, store, booth, catalog, website, television or radio broadcast, or similar place, medium, or forum.

(C) For purposes of subsection (A), a marketplace facilitator includes any related entities assisting the marketplace facilitator in sales, storage, distribution, payment collection, or in any other manner with respect to the marketplace.

(D) When a marketplace facilitator is comprised of multiple entities, the entity that lists or advertises, or allows the listing or advertising of, the products sold at retail in the marketplace is the entity responsible for remitting the sales and use tax to the State.

Amend code section 12-36-90(1)(a) to read:

SECTION 12-36-90. "Gross proceeds of sales".

Gross proceeds of sales, or any similar term, means the value proceeding or accruing from the sale, lease, or rental of tangible personal property.

(1) The term includes:

(a) the proceeds from the sale of property sold on consignment by the taxpayer of property of another person, including proceeds from property sold on consignment and property sold through a marketplace by a marketplace facilitator.

Amend code section 12-36-130(1) to read:

SECTION 12-36-130. "Sales price".

"Sales price" means the total amount for which tangible personal property is sold, without any deduction for the cost of the property sold, the cost of the materials used, labor or service cost, interest paid, losses, or any other expenses.

(1) The term includes:

(a) any services or transportation costs that are a part of the sale, whether paid in money or otherwise; and

(b) any manufacturers or importers excise tax imposed by the United States; and,

(c) the proceeds from the sale of property sold on consignment by the taxpayer of property of another person, including proceeds from property sold on consignment and property sold through a marketplace by a marketplace facilitator.

Amend code section 12-36-1340 as follows:

Each seller making retail sales of tangible personal property for storage, use, or other consumption in this State shall collect and remit the tax in accordance with this chapter and shall obtain from the department a retail license as provided in this chapter, if the retail seller:

(1) maintains a place of business;

(2) qualifies to do business;

(3) solicits and receives purchases or orders by an agent, independent contractor, representative, Internet website, or any other means or salesman; or

(4) distributes catalogs, or other advertising matter, and by reason of that distribution receives and accepts orders from residents within the State; or

(5) operates as a marketplace facilitator; or

(6) meets constitutional standards for economic nexus with South Carolina for purposes of the sales and use tax.

SECTION 3

This Act takes effect on July 1, 2019.

Recommendation 6:

That the Department of Revenue investigate the costs and benefits of **giving local governments the option of collecting local taxes through the MyDORWAY system** and update the Committee on its findings within six months of the publication of the full Committee report.

Discussion MyDORWAY is DOR's new online tax portal, designed to allow taxpayers to manage and pay their taxes online.⁸⁶ In response to questions from Subcommittee members, agency representatives testify that they have not examined the possibility of allowing local governments to collect property taxes through MyDORWAY, in part because DOR is not responsible for collecting those taxes.⁸⁷ Discussions during subcommittee meetings revealed an interest in this possibility due to the potential for increased security and convenience for taxpayers.⁸⁸ This recommendation was adopted by the Subcommittee on September 10, 2018. All members present voted in favor.⁸⁹

Curtail and Eliminate

There are no specific recommendations with regards to curtailing or eliminating agency programs.

SELECTED AGENCY INFORMATION

Department of Revenue. "Program Evaluation Report, 2018."

<https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/DOR/PER-CompletePDF-DOR.PDF> (accessed September 19, 2018).

Department of Revenue. "Restructuring and Seven-Year Plan Report, 2015."

<https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/2015AgencyRestructuringandSevenYearPlanReports/2015%20Department%20of%20Revenue.pdf> (accessed September 19, 2018).

Department of Revenue. "Agency Accountability Report, FY 2016-2017."

<https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/DOR/Reports%20&%20Audits%20-%20Reports%20and%20Reviews/Accountability%20Report%20-%202016-2017.pdf> (accessed September 19, 2018).

S.C. House of Representatives, Legislative Oversight Committee. "January-March 2018 Survey Results."

https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/LLR/Public_Survey_January_February_2018.PDF (accessed September 19, 2018).

APPENDIX: ADDITIONAL INFORMATION

The Subcommittee accepts for information purposes only the following agency recommendation:⁹⁰

That the General Assembly amend S.C. Code Title 61, Chapter 2 to provide consistent statutory guidance for DOR and the courts in applying penalties for alcohol licensing violations.

Draft Language Amend Title 61, Chapter 2 by adding the following section:

SECTION 1. (A) Notwithstanding any other provision in Title 61, the Department has the sole authority to revoke or suspend any license issued under Title 61 for any violation of this title.

(B) Should the Department not use the authority allowed in subsection (A) of this section the following penalties shall be imposed for any violation of this Title:

- (1) First offense there shall be imposed a penalty on the license holder of not less than five hundred dollars;
- (2) Second offense there shall be imposed a penalty on the license holder of not less than one thousand dollars;
- (3) Third offense there shall be imposed a penalty of suspension of the license issued under this Title of not less than forty-five days;
- (4) Fourth offense there shall be imposed a penalty of revocation of the license issued under this Title.

The Department shall review the prior three years from the date of the most recent violation to determine which offense applies.

SECTION 2. This Act takes effect upon the signature of the Governor.